

## 16D C.J.S. Constitutional Law § 2005

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### A. Civil Remedies and Proceedings

##### 10. Costs and Fees

## § 2005. Due process protections concerning costs and fees, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4018, 4019, 4021

**There are ordinarily no due process issues implicated by legislative regulation of court costs.**

Costs and fees are, in general, subject to regulation by a legislature, within the constitutional requirement of due process since they are merely incidental to court proceedings.<sup>1</sup> The charges must, however, be reasonable and not arbitrary.<sup>2</sup> A party may, consistent with due process, be required to bear the reasonable expenses involved in proving or defending a routine civil case.<sup>3</sup> Furthermore, a civil postjudgment hearing to collect costs imposed by statute following a criminal conviction provides a due process avenue to prevent erroneous deprivation via clerical or other errors.<sup>4</sup> Rational court filing fees do not violate due process rights,<sup>5</sup> and a statute that increases court filing fees and charges does not violate due process so long as the amount of the fees is not patently exclusionary.<sup>6</sup> A party does not have a right in all cases to be heard without the payment of fees, and the fact that a fee requirement denies a party the opportunity to be heard because the value of its interest relative to the filing fee renders litigation economically impractical does not show a violation of due process.<sup>7</sup>

Although security for costs may be required by a court rule,<sup>8</sup> requiring the posting of a security for costs for the benefit of another is a "taking" requiring prior procedural safeguards.<sup>9</sup> A statute providing that a particular type of action may not be prosecuted unless the plaintiff posts a bond sufficient to cover the defendant's costs and attorney's fees may be arbitrary and violate due process, if it is not reasonably related to a legislature's objective of deterring frivolous suits and arbitrarily denies the right to be heard solely because of an inability to post the bond.<sup>10</sup> A statute not providing for the payment of fees to witnesses in civil proceedings does not constitute a taking of property in violation of due process.<sup>11</sup>

Due process requires fair notice and an opportunity to be heard before awarding costs<sup>12</sup> or imposing sanctions for filing a frivolous suit.<sup>13</sup> In disposing of a Rule 11 sanctions motion, a federal district court must adhere to the procedural rules that safeguard due process rights.<sup>14</sup>

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

## Footnotes

- 1 La.—[Carrere v. Reddix](#), 210 La. 776, 28 So. 2d 267 (1946).  
Mo.—[State ex rel. McKittrick v. Bair](#), 333 Mo. 1, 63 S.W.2d 64 (1933).  
Nev.—[In re Condos' Estate](#), 70 Nev. 271, 266 P.2d 404 (1954).  
**Interim award of costs**  
A final judgment is not a due process prerequisite to an interim court order imposing litigation costs on a defendant.  
Cal.—[Civil Service Employees Ins. Co. v. Superior Court](#), 22 Cal. 3d 362, 149 Cal. Rptr. 360, 584 P.2d 497 (1978).  
**Prepayment**  
An act requiring the prepayment of a clerk's fee by a plaintiff did not deprive a plaintiff of property without due process.  
W. Va.—[McHenry v. Humes](#), 112 W. Va. 432, 164 S.E. 501 (1932).  
2 U.S.—[Edelberg v. Illinois Racing Bd.](#), 540 F.2d 279 (7th Cir. 1976).  
**Fine for late settlement**  
A local rule that imposed a mandatory \$500 fine upon all litigants who settled their legal actions shortly before trial violated due process, as it did not bear a rational relationship to any particular misconduct of the litigants or establish an amount demonstrably related to any avoidable costs incurred by the court as a result of the late settlement, and also failed to provide litigants the a prior opportunity to be heard.  
Colo.—[Raymond Lloyd Co. v. District Court for Twentieth Judicial Dist.](#), 732 P.2d 612 (Colo. 1987).  
**Domestic violence fund**  
An additional \$5 charge on petitioners for dissolution of marriage to be paid into a Domestic Violence Shelter and Service Fund violated the due process clause of a state constitution by arbitrarily imposing the burden of funding a general welfare program on a narrow group of litigants.  
Ill.—[Crocker v. Finley](#), 99 Ill. 2d 444, 77 Ill. Dec. 97, 459 N.E.2d 1346 (1984).  
**Sheriff's fee**  
There is a denial of due process when an incorrect basis for determining the amount of a sheriff's poundage fee is used, an excessive fee is exacted as a result, and judgment creditors do not have a remedy.  
U.S.—[Pennsylvania Bank & Trust Co. v. Hanisek](#), 426 F. Supp. 410 (W.D. Pa. 1977).  
3 Alaska—[Maness v. Gordon](#), 325 P.3d 522 (Alaska 2014).  
4 Tex.—[Thomas v. State](#), 445 S.W.3d 288 (Tex. App. Houston 1st Dist. 2013), reh'g overruled, (May 23, 2013).  
5 U.S.—[In re South](#), 689 F.2d 162 (10th Cir. 1982); [In re Bradford](#), 14 B.R. 722 (Bankr. N.D. Ill. 1981); [In re Roberts](#), 13 B.R. 832 (Bankr. N.D. Ohio 1981).  
**Lemon-law defense**  
A lemon law requirement that a manufacturer pay a \$250 filing fee to defend a consumer's complaint does not violate due process.  
Conn.—[Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. O'Neill](#), 212 Conn. 83, 561 A.2d 917 (1989).

**Homemaker program**

A statute requiring that every person filing a divorce action pay a \$50 fee to fund a displaced homemaker program did not violate due process as the fee did not significantly interfere with a person's right to obtain a divorce and was rationally related to a legitimate governmental interest of aiding displaced homemakers. N.D.—[Gange v. Clerk of Burleigh County Dist. Court](#), 429 N.W.2d 429 (N.D. 1988).

Fees imposed on bankruptcy debtors, see § 2008.

6 U.S.—[Manes v. Goldin](#), 400 F. Supp. 23 (E.D. N.Y. 1975), judgment *aff'd*, 423 U.S. 1068, 96 S. Ct. 851, 47 L. Ed. 2d 80 (1976).

7 U.S.—[In re South](#), 689 F.2d 162 (10th Cir. 1982).

8 U.S.—[Zeth v. Pennsylvania R. Co.](#), 7 F.R.D. 612 (E.D. Pa. 1947).

9 Cal.—[Gonzales v. Fox](#), 68 Cal. App. 3d Supp. 16, 137 Cal. Rptr. 312 (App. Dep't Super. Ct. 1977).

10 Fla.—[Psychiatric Associates v. Siegel](#), 610 So. 2d 419 (Fla. 1992) (action against member of medical review board).

11 Neb.—[Cochran v. Lincoln County](#), 203 Neb. 818, 280 N.W.2d 897 (1979).

12 W. Va.—[Corporation of Harpers Ferry v. Taylor](#), 227 W. Va. 501, 711 S.E.2d 571 (2011).

13 Iowa—[K. Carr v. Hovick](#), 451 N.W.2d 815 (Iowa 1990).

14 U.S.—[Castro v. Mitchell](#), 727 F. Supp. 2d 302 (S.D. N.Y. 2010).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 16D C.J.S. Constitutional Law § 2006

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### A. Civil Remedies and Proceedings

##### 10. Costs and Fees

## § 2006. Attorney's fees

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4018, 4019, 4021

**Due process is not violated by awarding attorney's fees to the prevailing party in particular classes of cases, but the procedure for awarding those fees is subject to due process requirements.**

Although attorney's fees and costs might well be a burden on litigants, neither state nor federal due process rights are violated by awarding attorney's fees to a prevailing party.<sup>1</sup> A legislature may authorize the imposition, by way of costs, of an attorney's fee in particular classes of cases,<sup>2</sup> such as upon the settlement of a decedent's estate,<sup>3</sup> and in partition actions,<sup>4</sup> workers' compensation cases,<sup>5</sup> civil rights suits,<sup>6</sup> small claims,<sup>7</sup> mechanic's lien,<sup>8</sup> wage collection,<sup>9</sup> wrongful termination,<sup>10</sup> racketeering,<sup>11</sup> and "exceptional" cases involving patents<sup>12</sup> or in cases against insurance companies<sup>13</sup> or landlords.<sup>14</sup> In addition, due process is not violated by the recovery of attorney's fees in stockholders' derivative actions even though the statute is made applicable to pending actions.<sup>15</sup> Conversely, the denial of attorney's fees in certain classes of actions does not deprive a plaintiff the right to due process or to be represented by an attorney since this does not prevent one from obtaining counsel.<sup>16</sup>

Due process requirements apply to the award of attorney's fees,<sup>17</sup> and a party must be given notice and an opportunity to be heard<sup>18</sup> or to contest the reasonableness of the fees sought.<sup>19</sup> Thus, due process is denied to absentee class members when a court awards an in personam judgment of attorney's fees, without adequate representation, against the individual class members.<sup>20</sup> This concern does not arise, however, when a class action creates a fund from which the fees can be reimbursed.<sup>21</sup>

It is not a denial of due process to limit the amount of attorney's fees in workers' compensation cases<sup>22</sup> prisoner litigation,<sup>23</sup> or medical malpractice suits.<sup>24</sup> A medical malpractice statute's requirement that attorney's fees in connection with arbitral and judicial proceedings be approved by the arbitration panel and the court respectively does not violate due process.<sup>25</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Hours expended by employee's counsel in the matter required a downward adjustment for the purpose of calculating attorneys' fees, after employee prevailed in a lawsuit against her employer, a county, arising from employer's failure to reinstate employee to her position in violation of the FMLA; some of the hours listed on employee's review statement warranted exclusion because they consisted of inter-office correspondences, vague entries, extensive hours documented for trial preparation, and clerical tasks. Family and Medical Leave Act of 1993 § 107, 29 U.S.C.A. § 2617(a)(1)(A)(i)-(ii). *Perry v. Isle of Wight County*, 311 F. Supp. 3d 751 (E.D. Va. 2018).

FMLA statute requires an award of attorney fees to the plaintiff when applicable; the award is not left to the discretion of the district court. Family and Medical Leave Act of 1993, § 107, 29 U.S.C.A. § 2617. *Walters v. Mayo Clinic Health System--Eau Claire Hosp., Inc.*, 91 F. Supp. 3d 1071 (W.D. Wis. 2015).

Documentation of charges for computer-based legal research allegedly performed by former public employee's attorneys, who represented former employee in her action against State for violations of FMLA's self-care provision, was insufficient to permit former employee to recover attorney fees for such charges, where attorneys did not specify relation between charges and legal work performed, nor did attorneys prove that charges were type of costs normally billed to paying client in relevant market or local community. Family and Medical Leave Act of 1993 § 102, 29 U.S.C.A. § 2612(a)(1)(D). *Lee v. State*, 906 N.W.2d 186 (Iowa 2018).

## [END OF SUPPLEMENT]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

### Footnotes

- 1 Alaska—*Stepanov v. Gavrilovich*, 594 P.2d 30 (Alaska 1979).  
**Family and Medical Leave Act**  
 An employee who prevailed on his Family and Medical Leave Act (FMLA) claim lacked any due process property interest in an award of his claimed attorney's fees.  
**No motive to penalize party**  
 U.S.—*Bell v. Prefix, Inc.*, 565 Fed. Appx. 498 (6th Cir. 2013).  
 An award of fees does violate due process if the court had the proper motive of compensating the party for litigation expenses rather than penalizing the opposing party.  
 Alaska—*Teseniar v. Spicer*, 74 P.3d 910 (Alaska 2003).
- 2 Kan.—*Hauser v. Doyle's Estate*, 143 Kan. 719, 56 P.2d 1217 (1936).  
 Ohio—*Flory v. Cripps*, 132 Ohio St. 487, 8 Ohio Op. 484, 9 N.E.2d 500 (1937).

Tex.—*Stafford v. Brennan*, 498 S.W.2d 703 (Tex. Civ. App. Corpus Christi 1973).

Cal.—*Estate of Effron*, 117 Cal. App. 3d 915, 173 Cal. Rptr. 93 (4th Dist. 1981).

Fla.—*In re Warner's Estate*, 160 Fla. 460, 35 So. 2d 296 (1948).

**Will contest**

Ohio—*Lindsey v. Markley*, 87 Ohio App. 529, 43 Ohio Op. 317, 96 N.E.2d 311 (5th Dist. Tuscarawas County 1950).

Ark.—*Cole v. Scott*, 264 Ark. 800, 575 S.W.2d 149 (1979).

N.M.—*New Mexico State Highway Department v. Bible*, 1934-NMSC-025, 38 N.M. 372, 34 P.2d 295 (1934).

U.S.—*New Windsor Volunteer Ambulance Corps, Inc. v. Meyers*, 442 F.3d 101 (2d Cir. 2006).

U.S.—*Missouri, K. & T. Ry. Co. of Tex. v. Harris*, 234 U.S. 412, 34 S. Ct. 790, 58 L. Ed. 1377 (1914).

Kan.—*Pinkerton v. Schwiethale*, 208 Kan. 596, 493 P.2d 200 (1972).

Fla.—*Hunter v. Flowers*, 43 So. 2d 435, 14 A.L.R.2d 447 (Fla. 1949).

Tex.—*McCullum v. Nowell*, 275 S.W.2d 866 (Tex. Civ. App. Fort Worth 1955).

Me.—*Bisbing v. Maine Medical Center*, 2003 ME 49, 820 A.2d 582 (Me. 2003).

**Represented by labor commissioner**

An award of attorney's fees to an employee, who was represented without charge by the labor commissioner on the employer's appeal from an administrative order granting the employee unpaid overtime wages, did not deprive the employer of due process, as there was no showing that the award gave the commissioner a direct, personal, substantial, and pecuniary interest in the case as would have denied the employer an impartial and fair hearing.

Cal.—*Lolley v. Campbell*, 28 Cal. 4th 367, 121 Cal. Rptr. 2d 571, 48 P.3d 1128 (2002), as modified, (Sept. 25, 2002) and as modified, (Sept. 25, 2002).

Alaska—*Van Huff v. Sohio Alaska Petroleum Co.*, 835 P.2d 1181 (Alaska 1992) (award to prevailing employer).

Ga.—*Dee v. Sweet*, 268 Ga. 346, 489 S.E.2d 823 (1997).

U.S.—*Codex Corp. v. Milgo Electronic Corp.*, 541 F. Supp. 1198 (D. Mass. 1982).

U.S.—*Empire State Ins. Co. v. Chafetz*, 302 F.2d 828 (5th Cir. 1962); *Iowa Nat. Mut. Ins. Co. v. City of Osawatomie, Kan.*, 458 F.2d 1124 (10th Cir. 1972).

Wash.—*Gossett v. Farmers Ins. Co. of Washington*, 133 Wash. 2d 954, 948 P.2d 1264 (1997).

N.H.—*Carter v. Lachance*, 146 N.H. 11, 766 A.2d 717 (2001).

U.S.—*Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949).

Ohio—*State ex rel. Jenkins v. Stern*, 33 Ohio St. 3d 108, 515 N.E.2d 928 (1987) (noting that a person does not have a generalized right to counsel in civil litigation).

When an indigent has a right to appointed counsel, see § 1978.

Idaho—*Haw v. Idaho State Bd. of Medicine*, 140 Idaho 152, 90 P.3d 902 (2004).

Md.—*Zdravkovich v. Bell Atlantic-Tricon Leasing, Corp.*, 323 Md. 200, 592 A.2d 498 (1991).

N.C.—*Williamson v. Williamson*, 217 N.C. App. 388, 719 S.E.2d 625 (2011).

S.D.—*Kappenman v. Kappenman*, 522 N.W.2d 199 (S.D. 1994).

**As sanction**

The constitutional guarantee of due process applies to the assessment of attorney's fees for litigation misconduct; due process was afforded where the party and attorney were on notice that the opponents were seeking to impose attorney's fees and took advantage of an adequate opportunity to respond in writing.

Md.—*Talley v. Talley*, 317 Md. 428, 564 A.2d 777 (1989).

Ariz.—*Sparks v. Republic Nat. Life Ins. Co.*, 132 Ariz. 529, 647 P.2d 1127 (1982).

D.C.—*Brady v. Fireman's Fund Ins. Companies*, 484 A.2d 566 (D.C. 1984).

Fla.—*Autorico, Inc. v. Government Employees Ins. Co.*, 398 So. 2d 485 (Fla. 3d DCA 1981).

N.C.—*Williamson v. Williamson*, 217 N.C. App. 388, 719 S.E.2d 625 (2011) (alimony case).

W. Va.—*Kanawha Valley Radiologists, Inc. v. One Valley Bank, N.A.*, 210 W. Va. 223, 557 S.E.2d 277 (2001).

**Meaningful, full, and fair hearing**

Fla.—*Moser v. Barron Chase Securities, Inc.*, 783 So. 2d 231 (Fla. 2001).

**Premature entry of award violated due process**

A trial court abused its discretion in awarding attorney's fees to credit card issuer before the time for credit cardholder to object had expired, in violation of his due process rights; the premature entry of judgment in favor of the credit card issuer deprived the cardholder of an opportunity to argue that some (or all) of the attorney's fees award was not authorized by statute or contract or to present any evidence bearing on the matter.

Utah—*Midland Funding LLC v. Sotolongo*, 2014 UT App 95, 325 P.3d 871 (Utah Ct. App. 2014).

19 Ala.—*Reynolds v. First Alabama Bank of Montgomery, N.A.*, 471 So. 2d 1238 (Ala. 1985).

W. Va.—*Harris v. Allstate Ins. Co.*, 208 W. Va. 359, 540 S.E.2d 576 (2000).

20 U.S.—*National Ass'n of Regional Medical Programs, Inc. v. Mathews*, 551 F.2d 340, 22 Fed. R. Serv. 2d 817 (D.C. Cir. 1976).

21 Alaska—*Municipality of Anchorage v. Gentile*, 922 P.2d 248 (Alaska 1996).

22 N.J.—*Haberberger v. Myer*, 4 N.J. 116, 71 A.2d 717 (1950).

**Fixed by board**

Ind.—*Buckler v. Hilt*, 209 Ind. 541, 200 N.E. 219, 103 A.L.R. 901 (1936).

23 D.C.—*District of Columbia v. Jerry M.*, 717 A.2d 866 (D.C. 1998).

24 Ill.—*Bernier v. Burris*, 113 Ill. 2d 219, 100 Ill. Dec. 585, 497 N.E.2d 763 (1986).

25 Md.—*Attorney General v. Johnson*, 282 Md. 274, 385 A.2d 57 (1978) (disapproved of on other grounds by, *Newell v. Richards*, 323 Md. 717, 594 A.2d 1152 (1991)).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 16D C.J.S. Constitutional Law § 2007

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### A. Civil Remedies and Proceedings

##### 10. Costs and Fees

## § 2007. Attorneys' fees—Domestic relations

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4018, 4019, 4021

**Although there is statutory authority providing for attorney's fees in alimony actions, this authority does not override a party's basic constitutional rights to notice and due process considerations.**

Since the problems of allocating the cost of litigation in domestic relations matters differ significantly from those in ordinary civil litigation, an award of attorney's fees when litigants in other kinds of actions are not given that relief is not a denial of due process.<sup>1</sup> Although there is statutory authority providing for attorney's fees in alimony actions, this authority does not override a party's basic constitutional rights to notice and due process considerations.<sup>2</sup> Thus, the authority of a trial court to enter a valid order for the payment of attorney's fees in a divorce action is conditioned upon compliance with the requirements of procedural due process and fundamental fairness.<sup>3</sup> Although attorney's fees should not be awarded based on an ex parte request and the attorney's affidavit if the respondent is not given an opportunity to question the reasonableness of the award, as required by due process,<sup>4</sup> due process is not denied if the respondent has a sufficient opportunity to respond<sup>5</sup> even if not given an opportunity to cross-examine the petitioner's counsel—such as by giving the respondent's counsel the opportunity to make recommendations to the court concerning the award.<sup>6</sup>



Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

- 1 Cal.—[In re Marriage of Coleman](#), 26 Cal. App. 3d 56, 102 Cal. Rptr. 629 (2d Dist. 1972).
- 2 N.C.—[Williamson v. Williamson](#), 217 N.C. App. 388, 719 S.E.2d 625 (2011).
- 3 S.D.—[Brennan v. Brennan](#), 88 S.D. 541, 224 N.W.2d 192 (1974).
- 4 Miss.—[Griffin v. Griffin](#), 579 So. 2d 1266 (Miss. 1991).
- 5 N.C.—[Williamson v. Williamson](#), 217 N.C. App. 388, 719 S.E.2d 625 (2011).  
S.D.—[Shoop v. Shoop](#), 460 N.W.2d 721 (S.D. 1990).
- 6 Wis.—[Tesch v. Tesch](#), 63 Wis. 2d 320, 217 N.W.2d 647 (1974).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 16D C.J.S. Constitutional Law § 2008

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### A. Civil Remedies and Proceedings

##### 10. Costs and Fees

## § 2008. Indigents

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4020, 4021

**A requirement that costs be paid as a condition of access to the courts may violate due process if it forecloses an indigent person's right to be heard with regard to a matter of fundamental rights.**

The right of an indigent civil litigant to proceed in forma pauperis is grounded in a common law right of access to the courts and constitutional principles of due process.<sup>1</sup> If the interest involved in a government proceeding is fundamental, procedural due process requires access for all, and a fee waiver for indigent litigants accomplishes that mandate.<sup>2</sup> Principles of due process or equal protection require that indigent litigants have access to the courts and require a complete waiver of fees.<sup>3</sup>

A cost requirement that is valid on its face may nonetheless offend due process because it operates to foreclose a particular party's opportunity to be heard.<sup>4</sup> Imposing filing fees and court costs violates indigents' rights to due process only if they effectively exclude indigents from the only forum empowered to settle grievances involving interests of basic importance in society or fundamental rights.<sup>5</sup> Conversely, if a fundamental right is not involved, filing fees do not violate due process, especially if alternatives are available to vindicate an indigent's rights.<sup>6</sup>

In view of the basic position of the marriage relationship in society and the State's monopolization of the means of dissolving it, due process precludes a state from denying, solely because of inability to pay court fees and costs, court access to an indigent who seeks in good faith to dissolve a marriage.<sup>7</sup> There is authority that a requirement that jurisdiction be obtained in a divorce case by personal service or publication does not violate due process even though the defendant could not be personally served and the plaintiff—solely due to inability to pay—could not pay the cost of publication.<sup>8</sup> However, it has also been held that due process requires a waiver of the cost of service by publication.<sup>9</sup> The statutory requirement of payment of filing fees as a condition precedent to obtaining a discharge in bankruptcy does not deny an indigent due process of law since a fundamental interest is not at stake, and there are other ways of adjusting liabilities to creditors.<sup>10</sup> However, indigent parties who bring adversary complaints in pending bankruptcy proceedings, to obtain relief from an automatic stay, may proceed in forma pauperis without the payment of filing fees since it would be a denial of due process to deny those parties access to the court simply because they are unable to pay filing fees.<sup>11</sup>

A state is not required, as a matter of due process, to advance money to secure the attendance of a nonresident witness in a proceeding in forma pauperis.<sup>12</sup> Furthermore, due process does not require that a state provide an appellate system or posthearing review that does not require payment of court fees and costs.<sup>13</sup> However, if the appellant's interest is a fundamental one, a monetary prerequisite to an appeal may be impermissible for an indigent litigant.<sup>14</sup> When a litigant's interest in a proceeding does not involve a fundamental right, there is no constitutional right to the waiver of court fees on appeal.<sup>15</sup>

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

#### Footnotes

- 1 Cal.—*C.S. v. W.O.*, 230 Cal. App. 4th 23, 178 Cal. Rptr. 3d 338 (2d Dist. 2014).
- 2 Wash.—*Didlake v. Washington State*, 345 P.3d 43 (Wash. Ct. App. Div. 1 2015).
- 3 Wash.—*Jafar v. Webb*, 177 Wash. 2d 520, 303 P.3d 1042 (2013).
- 4 U.S.—*Little v. Streater*, 452 U.S. 1, 101 S. Ct. 2202, 68 L. Ed. 2d 627 (1981); *Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971).  
**Paternity test**  
 A trial court's denial of a putative father's request to initially tax the costs of a blood test against the State left him with the responsibility of paying for the test and, because of his indigency, effectively denied him access to evidence, violating his due process rights.  
 Ga.—*Peterson v. Moffitt ex rel. Dept. of Human Resources*, 253 Ga. 253, 319 S.E.2d 449 (1984).  
 Jury fees affecting indigents' due process rights, see § 1972.
- 5 Mont.—*Ball v. Gee*, 243 Mont. 406, 795 P.2d 82 (1990).
- 6 Ark.—*Partin v. Bar of Arkansas*, 320 Ark. 37, 894 S.W.2d 906 (1995).
- 7 U.S.—*Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971).  
**Separation**  
 A portion of a statute denying the right of a litigant in a separation case to proceed in forma pauperis is contrary to due process.  
 La.—*Robertson v. Robertson*, 261 So. 2d 336 (La. Ct. App. 1st Cir. 1972).  
**Prisoner**  
 A prisoner was denied due process by a family court's refusal to allow him to proceed in a divorce action without the payment of costs where, even though the prisoner had a monthly income, it would have taken him almost four years to save the filing fee and the cost of serving process.  
 S.C.—*Ex parte Rice*, 307 S.C. 469, 415 S.E.2d 819 (1992).
- 8 Del.—*L. v. L.*, 305 A.2d 620 (Del. 1973).  
 Utah—*Lloyd v. Third Judicial Dist. Court In and For Salt Lake County*, 27 Utah 2d 322, 495 P.2d 1262 (1972).

- 9 Ill.—*King v. King*, 21 Ill. App. 3d 1062, 316 N.E.2d 555 (4th Dist. 1974).  
10 U.S.—*U.S. v. Kras*, 409 U.S. 434, 93 S. Ct. 631, 34 L. Ed. 2d 626 (1973).  
11 U.S.—*In re Sarah Allen Home, Inc.*, 4 B.R. 724 (Bankr. E.D. Pa. 1980).  
12 U.S.—*Brodkowitz v. Swenson*, 357 F. Supp. 178 (W.D. Mo. 1973).  
13 U.S.—*Ortwein v. Schwab*, 410 U.S. 656, 93 S. Ct. 1172, 35 L. Ed. 2d 572 (1973); *Bernstein v. State of N. Y.*, 466 F. Supp. 435 (S.D. N.Y. 1979), *aff'd*, 614 F.2d 1285 (2d Cir. 1979).  
Mo.—*In re Marriage of Valleroy*, 548 S.W.2d 857 (Mo. Ct. App. 1977).  
Whether the availability of an appeal is required by due process, see § 1997.  
Appeal bond requirements affecting indigents' due process rights, see § 1998.  
14 Wash.—*Didlake v. Washington State*, 345 P.3d 43 (Wash. Ct. App. Div. 1 2015).  
15 Me.—*Melder v. Carreiro*, 541 A.2d 1293 (Me. 1988).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 16D C.J.S. Constitutional Law § 2009

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### A. Civil Remedies and Proceedings

##### 10. Costs and Fees

## § 2009. Indigents—Prisoners

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4020, 4021

**Although, as a matter of due process, a state must provide indigent prisoners with the basic tools of an adequate defense or appeal if they are available for a price to other prisoners, statutory requirements for inmates who proceed in forma pauperis in civil proceedings may be enforced without violating the inmates' rights to court access or due process.**

Although, as a matter of due process, a state must provide indigent prisoners with the basic tools of an adequate defense or appeal if they are available for a price to other prisoners,<sup>1</sup> statutory requirements for inmates who proceed in forma pauperis in civil proceedings may be enforced without violating the inmates' rights to access to the courts or due process.<sup>2</sup> Thus, a statute that restricts the right to file in this manner after having previously filed multiple meritless civil lawsuits may be sustained on the basis that it did not implicate fundamental rights and was rationally related to a legitimate governmental interest of deterring frivolous prisoner lawsuits.<sup>3</sup> However, a court clerk's refusal of an indigent inmate's request for information concerning the costs of preparing a case transcript to use in preparing a habeas corpus application unconstitutionally infringes on the inmate's due process right of access to the courts.<sup>4</sup> If an inmate is not entitled to appointed counsel to assist in preparation of an initial habeas petition, the denial of a request for information on transcript fees cuts off the inmate's ability to prepare and present a complete habeas application stating all possible grounds for relief.<sup>5</sup>

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

- 1 U.S.—[Greene v. Brigano](#), 123 F.3d 917, 1997 FED App. 0253P (6th Cir. 1997).
- 2 Ohio—[Rash v. Anderson](#), 80 Ohio St. 3d 349, 1997-Ohio-338, 686 N.E.2d 505 (1997).  
Okla.—[Mehdipour v. State ex rel. Dept. of Corrections](#), 2004 OK 19, 90 P.3d 546 (Okla. 2004).
- 3 Okla.—[Mehdipour v. State ex rel. Dept. of Corrections](#), 2004 OK 19, 90 P.3d 546 (Okla. 2004).
- 4 Tex.—[In re Bonilla](#), 424 S.W.3d 528 (Tex. Crim. App. 2014).
- 5 Tex.—[In re Bonilla](#), 424 S.W.3d 528 (Tex. Crim. App. 2014).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 16D C.J.S. Constitutional Law VIII XXI B Refs.

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### B. Administrative Proceedings

[Topic Summary](#) | [Correlation Table](#)

## Research References

### A.L.R. Library

A.L.R. Index, Constitutional Law

A.L.R. Index, Due Process

West's A.L.R. Digest, [Constitutional Law](#) 🔑 4025 to 4027, 4045, 4055

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 16D C.J.S. Constitutional Law § 2010

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### B. Administrative Proceedings

##### 1. In General

## § 2010. Due process protections in administrative proceedings, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4025 to 4027, 4045, 4055

**Due process always stands as a constitutionally grounded procedural safety net in administrative proceedings, and its guaranties apply to the conduct of administrative agencies and officials, particularly if the proceedings are specifically classified as judicial or quasi-judicial in nature.**

Due process always stands as a constitutionally grounded procedural safety net in administrative proceedings,<sup>1</sup> and its guaranties apply to the conduct of administrative agencies and officials<sup>2</sup> with the same force as they do in judicial proceedings.<sup>3</sup> To meet basic standards of due process and to avoid being arbitrary, unreasonable, or capricious, an agency's decision must be grounded in some kind of objective data rather than mere surmise, guesswork, or gut feeling.<sup>4</sup> Proof of a denial of due process requires a showing of prejudice.<sup>5</sup>

Due process principles apply to quasi-judicial administrative proceedings,<sup>6</sup> which are governed by the fundamental principles and requirements of due process,<sup>7</sup> particularly when a property right is subject to a direct and material infringement.<sup>8</sup> In determining whether a decision is quasi-judicial in nature, as would require notice and hearing pursuant to procedural due



process, rather than quasi-legislative, the predominant consideration is the nature of the decision rendered by the governmental body.<sup>9</sup>

A person is entitled to procedural due process at an adjudicatory proceeding that tries an administrative offense.<sup>10</sup> However, a state constitutional provision containing a guaranty of due process of law that is limited in application to criminal proceedings does not to apply to a civil administrative proceeding.<sup>11</sup> The requirements concerning administrative due process rights apply to administrative actions,<sup>12</sup> but due process is not ordinarily an issue in a quasi-legislative agency proceeding.<sup>13</sup> Indeed, the requirements of due process tend to vary in proportion to the degree to which an administrative decision is adjudicative in nature, as opposed to legislative.<sup>14</sup> For the purpose of determining applicable due process requirements, a governmental agency exercises a "legislative function" when (1) it promulgates policies, standards, regulations, or rules of general application and prospective operation, and (2) the decision is appropriately based on considerations similar to those that the legislature itself could have invoked and not on the evidentiary input of particular individuals describing specific situations or instances.<sup>15</sup>

### *Delay.*

Although delay in administrative proceedings does not necessarily deprive a person of due process,<sup>16</sup> unreasonable delay may have such consequences,<sup>17</sup> and delay that may result in a wrongful deprivation of benefits to claimants raises due process implications.<sup>18</sup> In assessing whether a person's due process right against oppressive administrative delay has been violated, courts should analyze a variety of factors such as the length of the delay, the reason for the delay, the harm caused by it, and what other alternatives to relief were available.<sup>19</sup> The reason for the delay is the most important of these factors.<sup>20</sup> Delays in administrative proceedings may not violate due process if the person requesting the administrative proceeding contributed to the delay.<sup>21</sup>

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

### Footnotes

- 1 Miss.—[Holt v. Mississippi State Bd. of Dental Examiners](#), 131 So. 3d 1271 (Miss. Ct. App. 2014).
  - 2 U.S.—[Benedict v. Super Bakery, Inc.](#), 665 F.3d 1263, 81 Fed. R. Serv. 3d 363 (Fed. Cir. 2011); [Constructors Ass'n of Western Pennsylvania v. Kreps](#), 441 F. Supp. 936 (W.D. Pa. 1977), judgment *aff'd*, 573 F.2d 811 (3d Cir. 1978).  
Ill.—[Hayashi v. Illinois Dept. of Financial and Professional Regulation](#), 2014 IL 116023, 388 Ill. Dec. 878, 25 N.E.3d 570 (Ill. 2014).  
Miss.—[McFadden v. Mississippi State Bd. of Medical Licensure](#), 735 So. 2d 145 (Miss. 1999).  
Mont.—[Williams Insulation Co., Inc. v. Department of Labor and Industry](#), 2003 MT 72, 314 Mont. 523, 67 P.3d 262 (2003).  
N.H.—[Appeal of Morin](#), 140 N.H. 515, 669 A.2d 207 (1995).  
Wyo.—[Amoco Production Co. v. Wyoming State Bd. of Equalization](#), 7 P.3d 900 (Wyo. 2000).
- Adjudicatory powers**  
An agency that exercises adjudicatory powers is constrained by the demands of due process.  
Mass.—[Doherty v. Retirement Bd. of Medford](#), 425 Mass. 130, 680 N.E.2d 45 (1997).
- Discovery**  
Although every person who brings a claim at a hearing held before an administrative agency has a due process right to receive a fair trial in front of a fair tribunal, this right does not necessarily include a constitutional right to formal discovery.  
Utah—[Petro-Hunt, LLC v. Department of Workforce Services, Division of Adjudication](#), 2008 UT App 391, 197 P.3d 107 (Utah Ct. App. 2008).- 3 Pa.—[Pennsylvania Bankers Ass'n v. Pennsylvania Dept. of Banking](#), 598 Pa. 313, 956 A.2d 956 (2008).

- 4 Mo.—*Danna v. Missouri Department of Social Services, Family Support Division*, 449 S.W.3d 821 (Mo. Ct. App. W.D. 2014).
- 5 U.S.—*Ka Fung Chan v. Immigration & Naturalization Service*, 634 F.2d 248 (5th Cir. 1981).  
Colo.—*Ricci v. Davis*, 627 P.2d 1111 (Colo. 1981).  
Ill.—*Wolin v. Department of Financial and Professional Regulation*, 2012 IL App (1st) 112113, 367 Ill. Dec. 869, 983 N.E.2d 23 (App. Ct. 1st Dist. 2012).  
Pa.—*D.Z. v. Bethlehem Area School Dist.*, 2 A.3d 712, 259 Ed. Law Rep. 740 (Pa. Commw. Ct. 2010).
- Denial of notice**  
Although an applicant for a permit to withdraw groundwater did not receive notice through receipt of regulations issued concurrently with the Department of Ecology's acceptance of the United States Bureau of Reclamation's declaration of ownership of groundwater where the applicant did acquire notice and was not actually prejudiced, the denial of notice did not deny the applicant due process.  
Wash.—*Jensen v. Department of Ecology*, 102 Wash. 2d 109, 685 P.2d 1068 (1984).
- 6 U.S.—*B.K. ex rel. Kroupa v. 4-H*, 877 F. Supp. 2d 804, 287 Ed. Law Rep. 390 (D.S.D. 2012), *aff'd*, 731 F.3d 813, 297 Ed. Law Rep. 688 (8th Cir. 2013).  
Cal.—*Stanson v. San Diego Coast Regional Com.*, 101 Cal. App. 3d 38, 161 Cal. Rptr. 392 (4th Dist. 1980).  
Ill.—*Distaola v. Department of Registration and Ed.*, 72 Ill. App. 3d 977, 29 Ill. Dec. 226, 391 N.E.2d 489 (1st Dist. 1979).  
Pa.—*Belle Vernon Area School Dist. v. Gilmer*, 51 Pa. Commw. 603, 415 A.2d 121 (1980).
- Adversary parties**  
Constitutional guarantee of due process of law must be applied to and observed in administrative proceedings involving adversary parties.  
S.D.—*Application of Midwest Sec. Transfer, Inc.*, 354 N.W.2d 728 (S.D. 1984).
- 7 U.S.—*Standard Oil Co. v. F.T.C.*, 475 F. Supp. 1261 (N.D. Ind. 1979).  
Ill.—*Mathers v. Pollution Control Bd.*, 107 Ill. App. 3d 729, 63 Ill. Dec. 475, 438 N.E.2d 213 (3d Dist. 1982).  
Mo.—*Tonkin v. Jackson County Merit System Commission*, 599 S.W.2d 25 (Mo. Ct. App. W.D. 1980).  
Ohio—*Gibraltar Mausoleum Corp. v. City of Cincinnati*, 1 Ohio App. 3d 107, 439 N.E.2d 922 (1st Dist. Hamilton County 1981).  
Tex.—*Grace v. Structural Pest Control Bd. of Texas*, 620 S.W.2d 157 (Tex. Civ. App. Waco 1981), writ refused n.r.e.
- Due process under state law**  
A state may add to the requirements for federal due process in any quasi-judicial administrative proceeding.  
Ohio—*DeVilbiss v. Schade*, 186 Ohio App. 3d 441, 2010-Ohio-493, 928 N.E.2d 785 (2d Dist. Montgomery County 2010).
- 8 Colo.—*Mountain States Tel. & Tel. Co. v. Department of Labor and Employment*, 184 Colo. 334, 520 P.2d 586 (1974).
- Deprivation of life, liberty, or property**  
The principles of due process extend to every proceeding, judicial or administrative or executive in its nature, at which a party may be deprived of life, liberty, or property.  
Ga.—*Cobb County School Dist. v. Barker*, 271 Ga. 35, 518 S.E.2d 126 (1999).
- 9 Colo.—*Concerning Application for Water Rights of Colorado Water Conservation Board in the San Miguel River*, 2015 CO 21, 346 P.3d 52 (Colo. 2015).
- 10 Ala.—*Parducci v. Payne*, 360 So. 2d 1023 (Ala. Civ. App. 1978).
- 11 R.I.—*Taglianetti v. New England Tel. & Tel. Co.*, 81 R.I. 351, 103 A.2d 67 (1954).
- 12 U.S.—*Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 469 F. Supp. 836 (N.D. Ill. 1979), judgment *aff'd*, 616 F.2d 1006 (7th Cir. 1980).  
Cal.—*Sustainability of Parks, Recycling and Wildlife Legal Defense Fund v. County of Solano Dept. of Resource Management*, 167 Cal. App. 4th 1350, 84 Cal. Rptr. 3d 889 (1st Dist. 2008).  
N.J.—*Mendez v. City of Newark*, 132 N.J. Super. 261, 333 A.2d 307 (Law Div. 1975).  
Utah—*V-1 Oil Co. v. Department of Environmental Quality, Div. of Solid and Hazardous Waste*, 939 P.2d 1192 (Utah 1997).
- 13 Cal.—*City of Santa Cruz v. Local Agency Formation Com.*, 76 Cal. App. 3d 381, 142 Cal. Rptr. 873 (1st Dist. 1978).  
N.Y.—*Villani v. Berle*, 91 Misc. 2d 603, 398 N.Y.S.2d 796 (Sup 1977).

**Notice and hearing**

Due process does not require notice and hearing where a municipal body is acting in a quasi-legislative, rather than quasi-judicial, capacity.

Colo.—[State Farm Mut. Auto. Ins. Co. v. City of Lakewood](#), 788 P.2d 808 (Colo. 1990).

14 Utah—[V-1 Oil Co. v. Department of Environmental Quality, Div. of Solid and Hazardous Waste](#), 939 P.2d 1192 (Utah 1997).

15 Iowa—[Board of Sup'rs of Linn County v. Department of Revenue](#), 263 N.W.2d 227 (Iowa 1978).

16 U.S.—[Blackford v. Maryland Auto. Ins. Fund](#), 532 F. Supp. 24 (D. Md. 1981).

Vt.—[In re Bassette](#), 147 Vt. 359, 518 A.2d 15 (1986).

**Mere passage of time insufficient for prejudice**

Delay of 568 days by the Commission on Human Rights and Opportunities before it notified a condominium association and manager of its inability to complete investigation of a housing discrimination complaint was not shown to prejudice the association and manager or violate their right to due process as they failed to present evidence of prejudice other than the passage of time.

Conn.—[Commission on Human Rights and Opportunities v. Savin Rock Condominium Ass'n, Inc.](#), 273 Conn. 373, 870 A.2d 457 (2005).

17 Vt.—[In re Bassette](#), 147 Vt. 359, 518 A.2d 15 (1986).

Wis.—[Chicago & N.W.R.R. v. Labor and Industry Review Commission](#), 91 Wis. 2d 462, 283 N.W.2d 603 (Ct. App. 1979), decision aff'd, 98 Wis. 2d 592, 297 N.W.2d 819 (1980).

18 U.S.—[Quintana v. Harris](#), 491 F. Supp. 1044 (D.N.M. 1980).

19 W. Va.—[Hutchison v. City of Huntington](#), 198 W. Va. 139, 479 S.E.2d 649 (1996).

20 W. Va.—[Hutchison v. City of Huntington](#), 198 W. Va. 139, 479 S.E.2d 649 (1996).

21 Idaho—[Bell v. Idaho Transp. Dept.](#), 151 Idaho 659, 262 P.3d 1030 (Ct. App. 2011).

## 16D C.J.S. Constitutional Law § 2011

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### B. Administrative Proceedings

##### 1. In General

## § 2011. Investigative phase of proceeding

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4025 to 4027, 4045, 4055

### Traditional notions of due process do not attach in nonadjudicative fact-finding investigations.

Traditional notions of due process do not attach in nonadjudicative fact-finding investigations,<sup>1</sup> and an administrative investigation adjudicates no legal rights that are subject to due process protections.<sup>2</sup> Thus, the full panoply of due process safeguards need not necessarily be afforded to an individual during the investigative, as opposed to the adjudicative, phase of an administrative proceeding.<sup>3</sup> A subpoena that is issued to harass the target violates due process, however.<sup>4</sup>

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

### Footnotes

- <sup>1</sup> U.S.—[Georator Corp. v. Equal Employment Opportunity Commission](#), 592 F.2d 765 (4th Cir. 1979).
- <sup>2</sup> U.S.—[U.S. v. East River Housing Corp.](#), 50 Nat'l Disability Law Rep. P 151, 2015 WL 872160 (S.D. N.Y. 2015).

- 3 U.S.—*Tolbert v. McGriff*, 434 F. Supp. 682 (M.D. Ala. 1976); *Kreso v. Shinseki*, 2014 WL 4436418 (D. Colo. 2014) (investigation conducted by an administrative investigation board); *Dick v. U.S.*, 339 F. Supp. 1231 (D.D.C. 1972).
- Ill.—*Klein v. Fair Employment Practices Commission*, 31 Ill. App. 3d 473, 334 N.E.2d 370 (1st Dist. 1975).
- N.J.—*Hawk v. New Jersey Institute of Technology*, 428 N.J. Super. 562, 54 A.3d 840, 285 Ed. Law Rep. 900 (App. Div. 2012), certification denied, 214 N.J. 175, 68 A.3d 890 (2013).
- Right to counsel**
- A due process right is not violated by denying the assistance of counsel during the investigative phase.
- N.Y.—*Ronayne v. Lombard*, 92 Misc. 2d 538, 400 N.Y.S.2d 693 (Sup 1977).
- 4 Ill.—*People ex rel. Bernardi v. Lawrence & Ahlman, Inc.*, 105 Ill. App. 3d 470, 61 Ill. Dec. 350, 434 N.E.2d 503 (1st Dist. 1982).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 16D C.J.S. Constitutional Law § 2012

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### B. Administrative Proceedings

##### 1. In General

## § 2012. Form of procedure required

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4025 to 4027, 4045, 4055

**Procedural due process in the administrative setting does not always require the application of the judicial model, and the formalities requisite in judicial proceedings are not necessary to meet due process requirements in the administrative process.**

The process due in a given administrative proceeding depends on the interest at stake,<sup>1</sup> and no particular form of procedure is required to satisfy due process in administrative proceedings.<sup>2</sup> If an administrative remedy provides for reasonable notice and a reasonable opportunity to be heard, that is all that is required for due process.<sup>3</sup> The formalities requisite in judicial proceedings are not necessary to meet due process requirements in the administrative process,<sup>4</sup> and it is the substance, not the technical formalism, of an administrative procedure that affords due process.<sup>5</sup>

Procedural due process in the administrative setting does not require the application of the adversary<sup>6</sup> judicial model<sup>7</sup> in all, or even most, cases.<sup>8</sup> Thus, it is not always essential to follow all elements<sup>9</sup> of the trial-like procedures<sup>10</sup> that apply in judicial proceedings,<sup>11</sup>

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

- 1 Vt.—*In re Green Mountain Power Corp.*, 192 Vt. 429, 2012 VT 89, 60 A.3d 654 (2012).
- 2 U.S.—*Boulware v. Battaglia*, 344 F. Supp. 889 (D. Del. 1972), *aff'd*, 478 F.2d 1398 (3d Cir. 1973).  
Cal.—*Creed-21 v. City of San Diego*, 234 Cal. App. 4th 488, 184 Cal. Rptr. 3d 128 (4th Dist. 2015).  
Me.—*Wesson v. Town of Bremen*, 667 A.2d 596 (Me. 1995).  
Md.—*New Bd. of School Com'rs of Baltimore City v. Public School Adm'rs and Sup'rs Ass'n of Baltimore City*, 142 Md. App. 61, 788 A.2d 200, 160 Ed. Law Rep. 832 (2002).
- 3 Cal.—*Creed-21 v. City of San Diego*, 234 Cal. App. 4th 488, 184 Cal. Rptr. 3d 128 (4th Dist. 2015).
- 4 Fla.—*Hadley v. Department of Administration*, 411 So. 2d 184 (Fla. 1982).
- 5 Cal.—*Creed-21 v. City of San Diego*, 234 Cal. App. 4th 488, 184 Cal. Rptr. 3d 128 (4th Dist. 2015).
- 6 Cal.—*Today's Fresh Start, Inc. v. Los Angeles County Office of Educ.*, 57 Cal. 4th 197, 159 Cal. Rptr. 3d 358, 303 P.3d 1140, 294 Ed. Law Rep. 1052 (2013).
- 7 U.S.—*Dixon v. Love*, 431 U.S. 105, 97 S. Ct. 1723, 52 L. Ed. 2d 172 (1977).  
**General fact-finding investigations**  
Cal.—*Oberholzer v. Commission on Judicial Performance*, 20 Cal. 4th 371, 84 Cal. Rptr. 2d 466, 975 P.2d 663 (1999).  
N.M.—*Archuleta v. Santa Fe Police Dept. ex rel. City of Santa Fe*, 2005-NMSC-006, 137 N.M. 161, 108 P.3d 1019 (2005).
- 8 Cal.—*Today's Fresh Start, Inc. v. Los Angeles County Office of Educ.*, 57 Cal. 4th 197, 159 Cal. Rptr. 3d 358, 303 P.3d 1140, 294 Ed. Law Rep. 1052 (2013).
- 9 N.M.—*Archuleta v. Santa Fe Police Dept. ex rel. City of Santa Fe*, 2005-NMSC-006, 137 N.M. 161, 108 P.3d 1019 (2005).
- 10 Me.—*Town of Jay v. Androscoggin Energy, LLC*, 2003 ME 64, 822 A.2d 1114 (Me. 2003).
- 11 U.S.—*Main Road v. Aytch*, 565 F.2d 54 (3d Cir. 1977).  
Ill.—*Scott v. Association for Childbirth at Home, Intern.*, 88 Ill. 2d 279, 58 Ill. Dec. 761, 430 N.E.2d 1012 (1981).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 16D C.J.S. Constitutional Law § 2013

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### B. Administrative Proceedings

##### 1. In General

## § 2013. Due process requirements as varying with circumstances

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4025 to 4027, 4045, 4055

**Due process in administrative proceedings varies with the circumstances and may depend on an analysis of various criteria.**

The process that is due in administrative proceedings varies with the circumstances<sup>1</sup> and is generally recognized to be a matter of greater flexibility than when dealing with strictly judicial tribunals.<sup>2</sup> The cardinal or ultimate test of the presence or absence of due process of law in the administrative context is whether the rudiments of traditional fair play were present,<sup>3</sup> and whether there was fundamental fairness,<sup>4</sup> which includes fair notice of the scope of the proceedings and adherence of the agency to the stated scope.<sup>5</sup>

Procedural protections required for due process are particularly flexible in the area of administrative law;<sup>6</sup> and in determining what process is due in administrative proceedings, the inquiry is intensely practical.<sup>7</sup> An accommodation must be made between administrative and individual interests, testing the adequacy of available procedures by balancing the interests of the state in limiting the protections it extends against the interest of the individual in being afforded additional safeguards.<sup>8</sup> Various criteria



must be considered, such as the nature of the private interests that will be affected by the official action;<sup>9</sup> the risk of erroneously depriving those interests through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;<sup>10</sup> and the government's interest,<sup>11</sup> including the function involved and the fiscal and administrative burden that additional or substitute procedural requirements would entail.<sup>12</sup> It is also appropriate to take into account concerns about the practical operation of administrative agencies, including their variety, complexity, and flexibility.<sup>13</sup> However, financial cost is not controlling in determining whether due process requires a particular procedural safeguard,<sup>14</sup> and administrative efficiency at the expense of due process is not permissible.<sup>15</sup>

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

## Footnotes

- 1 U.S.—*Illinois Physicians Union v. Miller*, 675 F.2d 151 (7th Cir. 1982); *Loughran v. Codd*, 432 F. Supp. 259 (E.D. N.Y. 1976).  
Ala.—*Johnson v. Alabama Agr. and Mechanical University*, 481 So. 2d 336, 29 Ed. Law Rep. 1219 (Ala. 1985).  
Cal.—*Roth v. City of Los Angeles*, 53 Cal. App. 3d 679, 126 Cal. Rptr. 163 (1st Dist. 1975).  
**Case-by-case analysis**  
The level of due process required in an administrative setting must be decided under the facts and circumstances of each case.  
Md.—*Bragunier Masonry Contractors, Inc. v. Maryland Com'r of Labor and Industry*, 111 Md. App. 698, 684 A.2d 6 (1996).
- 2 U.S.—*Lacomastic Corp. v. Parker*, 54 F. Supp. 138 (D. Md. 1944).  
Conn.—*King v. Administrator, Unemployment Compensation Act*, 51 Conn. Supp. 302, 981 A.2d 1082 (Super. Ct. 2008).  
La.—*Hamilton v. Louisiana Health and Human Resources Administration*, 341 So. 2d 1190 (La. Ct. App. 1st Cir. 1976), writ refused, 344 So. 2d 4 (La. 1977).  
Miss.—*Mississippi Com'n on Environmental Quality v. Bell Utilities of Mississippi, LLC*, 135 So. 3d 868 (Miss. 2014).
- 3 U.S.—*West v. Williamsport Area Community College*, 492 F. Supp. 90 (M.D. Pa. 1980).  
Tex.—*State v. Crank*, 666 S.W.2d 91 (Tex. 1984).  
Wis.—*Bituminous Cas. Co. v. Department of Industry, Labor and Human Relations*, 97 Wis. 2d 730, 295 N.W.2d 183 (Ct. App. 1980).  
W. Va.—*State ex rel. White v. Parsons*, 199 W. Va. 1, 483 S.E.2d 1, 66 A.L.R.5th 737 (1996).  
**Hearing**  
Administrative agencies are not exempt from constitutional restraints of due process requirements which mandate that an administrative hearing constitute a fair trial, conducted in accordance with fundamental principles of fair play and applicable procedural standards established by law.  
Mont.—*Connell v. State, Dept. of Social and Rehabilitation Services, Child Support Enforcement Div.*, 280 Mont. 491, 930 P.2d 88 (1997).
- 4 Del.—*Vincent v. Eastern Shore Markets*, 970 A.2d 160 (Del. 2009).  
Iowa—*Aluminum Co. of America v. Musal*, 622 N.W.2d 476 (Iowa 2001).  
Ky.—*Whitley v. Robertson County*, 406 S.W.3d 11 (Ky. 2013).
- 5 Del.—*Vincent v. Eastern Shore Markets*, 970 A.2d 160 (Del. 2009).
- 6 Cal.—*Today's Fresh Start, Inc. v. Los Angeles County Office of Educ.*, 57 Cal. 4th 197, 159 Cal. Rptr. 3d 358, 303 P.3d 1140, 294 Ed. Law Rep. 1052 (2013).  
Pa.—*D.Z. v. Bethlehem Area School Dist.*, 2 A.3d 712, 259 Ed. Law Rep. 740 (Pa. Commw. Ct. 2010).
- 7 Wis.—*Layton School of Art and Design v. Wisconsin Employment Relations Commission*, 82 Wis. 2d 324, 262 N.W.2d 218 (1978).
- 8 U.S.—*Eisenberg v. Mathews*, 420 F. Supp. 1274 (E.D. Pa. 1976).

- 9 Wis.—*Layton School of Art and Design v. Wisconsin Employment Relations Commission*, 82 Wis. 2d 324, 262 N.W.2d 218 (1978).  
U.S.—*Long v. Gill*, 981 F. Supp. 2d 966 (D. Or. 2013).  
Alaska—*Alvarez v. State, Dept. of Admin., Div. of Motor Vehicles*, 249 P.3d 286 (Alaska 2011).  
Cal.—*Owen v. Sands*, 176 Cal. App. 4th 985, 98 Cal. Rptr. 3d 167 (1st Dist. 2009).  
Md.—*New Bd. of School Com'rs of Baltimore City v. Public School Adm'rs and Sup'rs Ass'n of Baltimore City*, 142 Md. App. 61, 788 A.2d 200, 160 Ed. Law Rep. 832 (2002).  
Miss.—*Mississippi Com'n on Environmental Quality v. Bell Utilities of Mississippi, LLC*, 135 So. 3d 868 (Miss. 2014).  
Ohio—*Krusling v. Ohio Bd. of Pharmacy*, 2012-Ohio-5356, 981 N.E.2d 320 (Ohio Ct. App. 12th Dist. Clermont County 2012).
- 10 U.S.—*Lopez v. Bay Shore Union Free School Dist.*, 668 F. Supp. 2d 406, 253 Ed. Law Rep. 302 (E.D. N.Y. 2009); *Long v. Gill*, 981 F. Supp. 2d 966 (D. Or. 2013).  
Alaska—*Alvarez v. State, Dept. of Admin., Div. of Motor Vehicles*, 249 P.3d 286 (Alaska 2011).  
Md.—*New Bd. of School Com'rs of Baltimore City v. Public School Adm'rs and Sup'rs Ass'n of Baltimore City*, 142 Md. App. 61, 788 A.2d 200, 160 Ed. Law Rep. 832 (2002).  
Miss.—*Mississippi Com'n on Environmental Quality v. Bell Utilities of Mississippi, LLC*, 135 So. 3d 868 (Miss. 2014).  
N.M.—*Archuleta v. Santa Fe Police Dept. ex rel. City of Santa Fe*, 2005-NMSC-006, 137 N.M. 161, 108 P.3d 1019 (2005).  
Ohio—*Krusling v. Ohio Bd. of Pharmacy*, 2012-Ohio-5356, 981 N.E.2d 320 (Ohio Ct. App. 12th Dist. Clermont County 2012).
- 11 U.S.—*Lopez v. Bay Shore Union Free School Dist.*, 668 F. Supp. 2d 406, 253 Ed. Law Rep. 302 (E.D. N.Y. 2009); *Long v. Gill*, 981 F. Supp. 2d 966 (D. Or. 2013).  
Alaska—*Alvarez v. State, Dept. of Admin., Div. of Motor Vehicles*, 249 P.3d 286 (Alaska 2011).  
Conn.—*Connecticut Natural Gas Corp. v. Department of Public Utility Control*, 51 Conn. Supp. 307, 981 A.2d 1084 (Super. Ct. 2009).  
Md.—*New Bd. of School Com'rs of Baltimore City v. Public School Adm'rs and Sup'rs Ass'n of Baltimore City*, 142 Md. App. 61, 788 A.2d 200, 160 Ed. Law Rep. 832 (2002).  
Miss.—*Mississippi Com'n on Environmental Quality v. Bell Utilities of Mississippi, LLC*, 135 So. 3d 868 (Miss. 2014).  
Ohio—*Krusling v. Ohio Bd. of Pharmacy*, 2012-Ohio-5356, 981 N.E.2d 320 (Ohio Ct. App. 12th Dist. Clermont County 2012).
- 12 U.S.—*Lopez v. Bay Shore Union Free School Dist.*, 668 F. Supp. 2d 406, 253 Ed. Law Rep. 302 (E.D. N.Y. 2009); *Long v. Gill*, 981 F. Supp. 2d 966 (D. Or. 2013).  
Alaska—*Alvarez v. State, Dept. of Admin., Div. of Motor Vehicles*, 249 P.3d 286 (Alaska 2011).  
Conn.—*Connecticut Natural Gas Corp. v. Department of Public Utility Control*, 51 Conn. Supp. 307, 981 A.2d 1084 (Super. Ct. 2009).  
Md.—*New Bd. of School Com'rs of Baltimore City v. Public School Adm'rs and Sup'rs Ass'n of Baltimore City*, 142 Md. App. 61, 788 A.2d 200, 160 Ed. Law Rep. 832 (2002).  
Ohio—*Krusling v. Ohio Bd. of Pharmacy*, 2012-Ohio-5356, 981 N.E.2d 320 (Ohio Ct. App. 12th Dist. Clermont County 2012).
- 13 Ind.—*Rynerson v. City of Franklin*, 669 N.E.2d 964 (Ind. 1996).
- 14 U.S.—*Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).
- 15 Cal.—*Manufactured Home Communities, Inc. v. County of San Luis Obispo*, 167 Cal. App. 4th 705, 84 Cal. Rptr. 3d 367 (2d Dist. 2008).  
Neb.—*Marshall v. Wimes*, 261 Neb. 846, 626 N.W.2d 229 (2001).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 16D C.J.S. Constitutional Law § 2014

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### B. Administrative Proceedings

##### 1. In General

## § 2014. Administrative regulations

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4025 to 4027, 4045, 4055

**An administrative regulation must conform to the essentials of due process, and a regulation that is promulgated pursuant to a direct grant of legislative authority is subject to the same standards of due process as a statute.**

An administrative regulation must conform to the essentials of due process,<sup>1</sup> and a regulation that is promulgated under a direct grant of legislative authority is subject to the same standards of due process as a statute.<sup>2</sup> Although the results of legislative rule-making sufficiently impinge on the rights of individuals to require some conformance with notions of due process,<sup>3</sup> due process does not require that the full panoply of rule-making procedures be imposed on the logical and direct application of existing regulations.<sup>4</sup> If an administrative agency chooses to adopt rules or regulations that provide for some form of discovery, then it must ensure that the procedures meet due process requirements.<sup>5</sup> A refusal to answer some discovery requests in an administrative proceeding does not violate due process if there is no authority to conduct formal discovery.<sup>6</sup>

A valid administrative rule or regulation must be reasonably related to a proper legislative purpose<sup>7</sup> and rationally designed to carry out a legitimate and well-defined statutory purpose.<sup>8</sup> Legislative administrative rules violate due process when they lack a legitimate supporting reasons.<sup>9</sup>

In order to comport with due process, a rule or regulation must be sufficiently certain to inform persons of the duties imposed.<sup>10</sup> To avoid being vague under due process standards, a regulation must give a person of ordinary intelligence fair notice that his or her contemplated conduct is forbidden.<sup>11</sup> A regulation is not unconstitutionally vague merely because it may at times be difficult to prove an incriminating fact; rather, it must be unclear what fact must be proved.<sup>12</sup>

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

## Footnotes

- 1 Vt.—[Royalton College, Inc. v. State Bd. of Ed.](#), 127 Vt. 436, 251 A.2d 498 (1969).  
**Conflicts**  
When the regulation granting the Department of Natural Resources the discretion to hold a hearing conflicts with the requirements of the state due process clauses, the former must give way to the latter.  
Alaska—[White v. State, Dept. of Natural Resources](#), 984 P.2d 1122 (Alaska 1999).
- 2 Colo.—[Continental Liquor Co. v. Kalbin](#), 43 Colo. App. 438, 608 P.2d 353 (App. 1977).
- 3 U.S.—[Pickus v. U.S. Bd. of Parole](#), 543 F.2d 240 (D.C. Cir. 1976).
- 4 U.S.—[Crown Zellerbach Corp. v. Marshall](#), 441 F. Supp. 1110 (E.D. La. 1977).
- 5 W. Va.—[State ex rel. Hoover v. Smith](#), 198 W. Va. 507, 482 S.E.2d 124 (1997).
- 6 Pa.—[KC Equities v. Department of Public Welfare](#), 95 A.3d 918 (Pa. Commw. Ct. 2014), appeal denied, 106 A.3d 727 (Pa. 2015).
- 7 Ohio—[Ohio Academy of Nursing Homes, Inc. v. Barry](#), 56 Ohio St. 3d 120, 564 N.E.2d 686 (1990).
- 8 Me.—[State v. Dube](#), 409 A.2d 1102 (Me. 1979).  
**Issue**  
If a regulation is challenged on nonprocedural grounds as violating due process, the question is whether there is some reasonable connection between the statute or regulation and a legitimate state objective.  
N.Y.—[Fujishima v. Games Management Services](#), 110 Misc. 2d 970, 443 N.Y.S.2d 323 (Sup 1981).
- 9 Tex.—[Bullock v. Hewlett-Packard Co.](#), 628 S.W.2d 754 (Tex. 1982).
- 10 U.S.—[Franklin v. First Money, Inc.](#), 427 F. Supp. 66 (E.D. La. 1976), judgment aff'd, 599 F.2d 615 (5th Cir. 1979).  
**Technical meaning**  
The certainty requirement for purposes of due process is satisfied when words and phrases have technical or special meaning commonly understood by those subject to administrative rule.  
Ill.—[Northern Illinois Auto. Wreckers and Rebuilders Ass'n v. Dixon](#), 75 Ill. 2d 53, 25 Ill. Dec. 664, 387 N.E.2d 320 (1979).
- 11 Ark.—[McKinley v. Arkansas Dept. of Human Services, Div. of Family Services](#), 311 Ark. 382, 844 S.W.2d 366 (1993).
- 12 U.S.—[F.C.C. v. Fox Television Stations, Inc.](#), 132 S. Ct. 2307, 183 L. Ed. 2d 234 (2012).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 16D C.J.S. Constitutional Law § 2015

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### B. Administrative Proceedings

##### 1. In General

## § 2015. Administrative regulations—Compliance by agency

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4025 to 4027, 4045, 4055

**Due process requires that an agency's procedural rules and regulations must be followed in the course of administrative proceedings, and courts must be particularly vigilant to protect due process in matters that pertain to a governmental entity's observance and implementation of its self-prescribed procedures.**

Due process requires that an agency's procedural<sup>1</sup> rules and regulations must be followed in the course of administrative proceedings.<sup>2</sup> An agency's failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual's constitutional right to due process.<sup>3</sup> A state agency's violation of its own regulations may, in and of itself, constitute a violation of due process<sup>4</sup> even though the policy may be more generous than the constitution requires.<sup>5</sup> Due process does not require strict adherence to a statute by an administrative agency, however, if no additional guarantees of fairness, notice, or an opportunity to be heard would result.<sup>6</sup>

Courts must be particularly vigilant to protect due process in matters that pertain to a governmental entity's observance and implementation of its self-prescribed procedures<sup>7</sup> and should ensure that the entities strictly adhere to both the letter and spirit of their own rules and regulations.<sup>8</sup>

However, in view of the fact that the process that is due under the administrative rules and minimum due process safeguards are not always identical,<sup>9</sup> not every violation of agency rules rises to the level of a due process claim.<sup>10</sup> Thus, a failure to comply with the regulations does not necessarily deny due process.<sup>11</sup> Furthermore, a violation does not exist if no interest within the protection of the Due Process Clause is involved.<sup>12</sup>

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

#### Footnotes

- 1 U.S.—*Bills v. Henderson*, 631 F.2d 1287 (6th Cir. 1980).
- 2 U.S.—*Brown v. U.S.*, 377 F. Supp. 530 (N.D. Tex. 1974).  
W. Va.—*Harrah v. Leverette*, 165 W. Va. 665, 271 S.E.2d 322 (1980).
- 3 U.S.—*Davila v. Commissioner of Social Sec.*, 993 F. Supp. 2d 737 (N.D. Ohio 2014).
- 4 U.S.—*Whiteside v. Kay*, 446 F. Supp. 716 (W.D. La. 1978).  
**Policy need not be formally adopted**  
U.S.—*Hupart v. Board of Higher Ed. of City of New York*, 420 F. Supp. 1087 (S.D. N.Y. 1976).
- 5 U.S.—*Hupart v. Board of Higher Ed. of City of New York*, 420 F. Supp. 1087 (S.D. N.Y. 1976).  
Colo.—*Rags Over the Arkansas River, Inc. v. Parks*, 2015 COA 11M, 2015 WL 795268 (Colo. App. 2015).  
Wash.—*Smith v. Greene*, 86 Wash. 2d 363, 545 P.2d 550 (1976).
- 6 Md.—*State v. Cates*, 417 Md. 678, 12 A.3d 116 (2011).
- 7 Ark.—*Smith v. Denton*, 320 Ark. 253, 895 S.W.2d 550, 99 Ed. Law Rep. 636 (1995).
- 8 Ark.—*Smith v. Denton*, 320 Ark. 253, 895 S.W.2d 550, 99 Ed. Law Rep. 636 (1995).
- 9 Ill.—*Taylor v. Franzen*, 93 Ill. App. 3d 758, 48 Ill. Dec. 840, 417 N.E.2d 242 (5th Dist. 1981), opinion supplemented, 93 Ill. App. 3d 1152, 51 Ill. Dec. 645, 420 N.E.2d 1203 (5th Dist. 1981).
- 10 U.S.—*Smith v. State of Ga.*, 684 F.2d 729 (11th Cir. 1982).  
**Repeal of rule or regulation**  
Due process generally requires that parties affected by repeal of a regulation receive reasonable notice of the proposed repeal.  
N.M.—*Rivas v. Board of Cosmetologists*, 1984-NMSC-076, 101 N.M. 592, 686 P.2d 934 (1984).
- 11 U.S.—*U.S. v. Floulis*, 457 F. Supp. 1350 (W.D. Pa. 1978).
- 12 U.S.—*Hall v. E.E.O.C.*, 456 F. Supp. 695 (N.D. Cal. 1978).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 16D C.J.S. Constitutional Law § 2016

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### B. Administrative Proceedings

##### 2. Notice and Hearing

## § 2016. Notice and hearing in administrative proceedings, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4025 to 4027, 4045, 4055

**The right to notice and hearing in an administrative proceeding depends on the character of the proceeding and the circumstances involved, but notice and hearing are ordinarily essential to due process if the proceeding affects a person's liberty or property rights.**

The right to notice and hearing in an administrative proceeding depends on the character of the proceeding and the circumstances involved, and due process does not require the notice and hearing that is essential in judicial proceedings in some cases involving the exercise of administrative or legislative functions<sup>1</sup> as where the findings of an agency are not adjudicative.<sup>2</sup> Thus, notice and hearing are not required in the formulation and issuance of general rules and regulations, as distinguished from the rendering of determinations and decisions in adjudicatory proceedings,<sup>3</sup> and thus, an evidentiary hearing is not required, at least when no disputed adjudicative facts are involved.<sup>4</sup> Due process does not require a state agency to engage in notice-and-comment rulemaking.<sup>5</sup> Furthermore, if such rulemaking is implemented, it comports with due process,<sup>6</sup> which does not entitle a person to an evidentiary hearing if an agency determination turns only on legislative facts.<sup>7</sup>

As a general rule, notice and an opportunity for a hearing are essential to due process in proceedings that are administrative in character<sup>8</sup> and affect a person's liberty or property,<sup>9</sup> if the agency performs adjudicatory functions,<sup>10</sup> acts in a judicial or quasi-judicial capacity,<sup>11</sup> or takes action on the basis of adjudicative facts.<sup>12</sup> Accordingly, property ordinarily cannot be taken under order of an official or board without notice.<sup>13</sup> Furthermore, due process generally requires administrative hearings when benefits or privileges are revoked or suspended,<sup>14</sup> although some governmental benefits may be administratively terminated without affording a recipient a pretermination evidentiary hearing, if harm to the public is threatened and the private interest infringed is reasonably deemed to be of less importance.<sup>15</sup>

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

## Footnotes

- 1 U.S.—*Corn Exchange Bank v. Coler*, 280 U.S. 218, 50 S. Ct. 94, 74 L. Ed. 378 (1930).  
 Colo.—*Johns v. Miller*, 42 Colo. App. 97, 594 P.2d 590 (App. 1979).  
 Iowa—*Board of Sup'rs of Linn County v. Department of Revenue*, 263 N.W.2d 227 (Iowa 1978).  
 Md.—*Montgomery County v. Woodward & Lothrop, Inc.*, 280 Md. 686, 376 A.2d 483 (1977).  
**A.L.R. Library**  
*Deprivation of Due Process in Connection with Veteran's Right to Disability, Medical, or Mental Health Benefits, Treatment, or Services*, 83 A.L.R. Fed. 2d 133.
- 2 U.S.—*City of Wenatchee v. U.S.*, 526 F. Supp. 439 (E.D. Wash. 1981).  
 Vt.—*Parker v. Town of Milton*, 169 Vt. 74, 726 A.2d 477 (1998).
- 3 U.S.—*Birnberg v. Washington Metropolitan Area Transit Authority*, 389 F. Supp. 340 (D.D.C. 1975);  
*Parsons v. U.S. Postal Service*, 380 F. Supp. 815 (D.N.J. 1974).  
 N.Y.—*Kupferman v. New York State Bd. of Social Welfare*, 60 A.D.2d 674, 399 N.Y.S.2d 949 (3d Dep't 1977), order aff'd, 47 N.Y.2d 738, 417 N.Y.S.2d 254, 390 N.E.2d 1178 (1979).
- 4 U.S.—*Northeast Emergency Medical Associates, P. C. v. Califano*, 470 F. Supp. 1111 (E.D. Pa. 1979).  
**Definition of "adjudicative facts"**  
 "Adjudicative facts," for purposes of determining whether person affected by agency proceeding has due process right to evidentiary hearing, relate to specific parties and their particular circumstances; they involve individualized facts peculiar to parties, and ordinarily answer questions of who did what, where, when, how, why, and with what motive or intent.  
 Iowa—*Greenwood Manor v. Iowa Dept. of Public Health, State Health Facilities Council*, 641 N.W.2d 823 (Iowa 2002).
- 5 U.S.—*New Jersey Primary Care Ass'n Inc. v. New Jersey Dept. of Human Services*, 722 F.3d 527 (3d Cir. 2013).
- 6 U.S.—*Pickus v. U.S. Bd. of Parole*, 543 F.2d 240 (D.C. Cir. 1976).
- 7 Iowa—*Bernau v. Iowa Dept. of Transp.*, 580 N.W.2d 757 (Iowa 1998).
- 8 U.S.—*Kwong Hai Chew v. Colding*, 344 U.S. 590, 73 S. Ct. 472, 97 L. Ed. 576 (1953).  
 Me.—*Martin v. Unemployment Ins. Com'n*, 1998 ME 271, 723 A.2d 412 (Me. 1998).  
 Miss.—*Public Employees' Retirement System v. Stamps*, 898 So. 2d 664, 197 Ed. Law Rep. 954 (Miss. 2005).  
 Mo.—*Missouri Department of Social Services, Family Support Division v. J & J Industrial Supply, Inc.*, 2015 WL 1476784 (Mo. Ct. App. E.D. 2015).  
**Critical aspect**  
 Idaho—*Grindstone Butte Mut. Canal Co. v. Idaho Power Co.*, 98 Idaho 860, 574 P.2d 902 (1978).  
**Factual predicates**  
 Administrative agencies are bound by the requirements of procedural due process to give the defendant prompt notice of the factual predicates of the government's case.  
 U.S.—*Standard Oil Co. v. F.T.C.*, 475 F. Supp. 1261 (N.D. Ind. 1979).
- 9 U.S.—*Kwong Hai Chew v. Colding*, 344 U.S. 590, 73 S. Ct. 472, 97 L. Ed. 576 (1953); *American Trucking Associations, Inc. v. U.S.*, 627 F.2d 1313 (D.C. Cir. 1980).



Ill.—[Burns v. Police Bd. of City of Chicago](#), 104 Ill. App. 3d 612, 60 Ill. Dec. 401, 432 N.E.2d 1300 (1st Dist. 1982).

**Subject matter**

An evidentiary hearing is unnecessary in an agency proceeding when the alleged interest of the party seeking a contested case cannot be described as a life, liberty, or property interest under the Due Process Clause.

Iowa—[Greenwood Manor v. Iowa Dept. of Public Health, State Health Facilities Council](#), 641 N.W.2d 823 (Iowa 2002).

10 N.C.—[Harrell v. Wilson County Schools](#), 58 N.C. App. 260, 293 S.E.2d 687, 5 Ed. Law Rep. 658 (1982).

Pa.—[Conestoga Nat. Bank of Lancaster v. Patterson](#), 442 Pa. 289, 275 A.2d 6 (1971).

11 U.S.—[Gonzales v. U.S.](#), 348 U.S. 407, 75 S. Ct. 409, 99 L. Ed. 467 (1955).

Colo.—[Lobato v. Industrial Claim Appeals Office](#), 105 P.3d 220 (Colo. 2005).

12 U.S.—[National Ass'n for Advancement of Colored People v. Wilmington Medical Center, Inc.](#), 453 F. Supp. 330 (D. Del. 1978).

13 U.S.—[Anderson Nat. Bank v. Lueckett](#), 321 U.S. 233, 64 S. Ct. 599, 88 L. Ed. 692, 151 A.L.R. 824 (1944); [Knu-Vise, Inc. v. War Contracts Price Adjustment Bd.](#), 195 F.2d 198 (D.C. Cir. 1952).

14 U.S.—[Goldberg v. Kelly](#), 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970); [Lamb v. Hamblin](#), 57 F.R.D. 58 (D. Minn. 1972).

Del.—[State v. Kamalski](#), 429 A.2d 1315 (Del. Super. Ct. 1981).

15 U.S.—[Ewing v. Mytinger & Casselberry](#), 339 U.S. 594, 70 S. Ct. 870, 94 L. Ed. 1088 (1950).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 16D C.J.S. Constitutional Law § 2017

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### B. Administrative Proceedings

##### 2. Notice and Hearing

## § 2017. Adequacy of notice

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4025 to 4027, 4045, 4055

**To satisfy due process, notice in an administrative proceeding must be adequate and reasonably calculated to inform the parties of administrative proceedings that may directly and adversely affect their legally protected interests, the claims of opposing parties, and the disputed issues.**

To satisfy due process, notice in an administrative proceeding must be adequate<sup>1</sup> and reasonably calculated to inform the parties of administrative proceedings that may directly and adversely affect their legally protected interests,<sup>2</sup> the claims of opposing parties,<sup>3</sup> and the issues in controversy.<sup>4</sup> The notice must afford the parties an opportunity to prepare and present their positions<sup>5</sup> or to defend themselves.<sup>6</sup> Whether notice is constitutionally sufficient depends on what the governmental agency knew, or should have known, when it gave notice.<sup>7</sup>

***Notice by publication.***

Due process does not require perfect notice of an administrative hearing, but only notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.<sup>8</sup> Thus, under some circumstances, notice by publication does not violate due process.<sup>9</sup> Under due process principles, publication in the Federal Register is legally sufficient notice of agency proceedings to all interested or affected persons—except those who are legally entitled to personal notice—regardless of actual knowledge or any hardship resulting from ignorance.<sup>10</sup>

### *Provision for appeal.*

If there is due provision for appeal to a judicial tribunal, no notice or hearing before the administrative tribunal is essential to due process.<sup>11</sup> Accordingly, if a hearing is not included in the administrative process, it may be adequately supplied by a judicial proceeding in which new evidence may be supplied and full opportunity afforded for exploration of the basis of the disputed administrative order.<sup>12</sup> However, it is essential that a trial de novo be permitted in order for judicial review to cure any defect in the proceedings.<sup>13</sup>

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

### Footnotes

- 1 D.C.—[Ammerman v. District of Columbia Rental Accommodations Commission](#), 375 A.2d 1060 (D.C. 1977).  
Ill.—[Burns v. Police Bd. of City of Chicago](#), 104 Ill. App. 3d 612, 60 Ill. Dec. 401, 432 N.E.2d 1300 (1st Dist. 1982).
- 2 U.S.—[Huntley v. North Carolina State Bd. of Ed.](#), 493 F.2d 1016 (4th Cir. 1974).  
Alaska—[Smart v. State, Dept. of Health And Social Services](#), 237 P.3d 1010 (Alaska 2010) (property rights).  
Cal.—[Phillips v. Seely](#), 43 Cal. App. 3d 104, 117 Cal. Rptr. 863 (3d Dist. 1974).  
La.—[Knight v. Louisiana State Bd. of Medical Examiners](#), 211 So. 2d 433 (La. Ct. App. 4th Cir. 1968), writ refused, 252 La. 889, 214 So. 2d 716 (1968).  
**Notice of newly announced decision**  
When a new rule is established through individual adjudication, due process requires that the agency provide notice that is reasonably calculated to inform all those whose legally protected interests may be affected by the new principle.  
D.C.—[Epstein, Becker, and Green v. District of Columbia Dept. of Employment Services](#), 850 A.2d 1140 (D.C. 2004).
- 3 Tenn.—[McClellan v. Board of Regents of State University](#), 921 S.W.2d 684, 109 Ed. Law Rep. 997 (Tenn. 1996).
- 4 U.S.—[Intercontinental Industries, Inc. v. American Stock Exchange](#), 452 F.2d 935 (5th Cir. 1971).  
Md.—[Board of County Com'rs for St. Mary's County v. Southern Resources Management, Inc.](#), 154 Md. App. 10, 837 A.2d 1059 (2003).
- 5 D.C.—[Watergate Imp. Associates v. Public Service Commission](#), 326 A.2d 778 (D.C. 1974).  
N.M.—[TW Telecom of New Mexico, L.L.C. v. New Mexico Public Regulation Com'n](#), 2011-NMSC-029, 150 N.M. 12, 256 P.3d 24 (2011).  
**Opportunity to prepare**  
Under due process principles, notice of an administrative agency hearing should inform the party of the issues involved, in order to prevent surprise at the hearing and allow that party an opportunity to prepare.  
Neb.—[Lariat Club, Inc. v. Nebraska Liquor Control Com'n](#), 267 Neb. 179, 673 N.W.2d 29 (2004).
- 6 Md.—[Regan v. Board of Chiropractic Examiners](#), 120 Md. App. 494, 707 A.2d 891 (1998), *aff'd*, 355 Md. 397, 735 A.2d 991 (1999).  
N.M.—[TW Telecom of New Mexico, L.L.C. v. New Mexico Public Regulation Com'n](#), 2011-NMSC-029, 150 N.M. 12, 256 P.3d 24 (2011).
- 7 Me.—[Livonia v. Town of Rome](#), 1998 ME 39, 707 A.2d 83 (Me. 1998).
- 8 N.H.—[In re Hiscoe](#), 147 N.H. 223, 786 A.2d 96 (2001).

- 9 Ariz.—Matter of Rights to Use of Gila River, 171 Ariz. 230, 830 P.2d 442 (1992).  
S.D.—Matter of State of S.D. Water Management Bd. Approving Water Permit No. 1791-2, 351 N.W.2d 119 (S.D. 1984).
- 10 U.S.—State of California ex rel. Lockyer v. F.E.R.C., 329 F.3d 700 (9th Cir. 2003).
- 11 U.S.—Bourjois, Inc., v. Chapman, 301 U.S. 183, 57 S. Ct. 691, 81 L. Ed. 1027 (1937).  
Me.—Ethyl Corp. v. Adams, 375 A.2d 1065 (Me. 1977).  
Neb.—In re Water Appropriation No. 442A, 210 Neb. 161, 313 N.W.2d 271 (1981).
- 12 U.S.—Boone v. Wyman, 295 F. Supp. 1143 (S.D. N.Y. 1969), judgment aff'd, 412 F.2d 857 (2d Cir. 1969).  
Cal.—C.V.C. v. Superior Court, 29 Cal. App. 3d 909, 106 Cal. Rptr. 123 (3d Dist. 1973).  
Me.—Ethyl Corp. v. Adams, 375 A.2d 1065 (Me. 1977).  
Tex.—Big D Bamboo, Inc. v. State, 567 S.W.2d 915 (Tex. Civ. App. Beaumont 1978).
- 13 Kan.—Neeley v. Board of Trustees, Policemen's and Firemen's Retirement System, City of Wichita, 205 Kan. 780, 473 P.2d 72 (1970).  
N.Y.—McCabe v. Board of Trustees of Police Pension Fund of City of New York, Article 2, 56 Misc. 2d 329, 288 N.Y.S.2d 538 (Sup 1968).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 16D C.J.S. Constitutional Law § 2018

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### B. Administrative Proceedings

##### 2. Notice and Hearing

## § 2018. Requisites and sufficiency of hearing, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4025 to 4027, 4045, 4055

**Due process of law in administrative proceedings requires but one adequate hearing, in which the procedure is consistent with the essentials of a fair trial; the hearing must be a full and a fair one, with an opportunity to offer evidence.**

Due process of law, with respect to administrative proceedings, requires but one adequate hearing,<sup>1</sup> in which the procedure is consistent with the essentials of a fair trial.<sup>2</sup> A fair trial in a fair tribunal is a basic requirement of due process, and this applies to administrative agencies that adjudicate, as well as to courts.<sup>3</sup> The demands of due process do not require a hearing at any particular point in an administrative proceeding so long as the requisite hearing is held before the final order becomes effective.<sup>4</sup> Accordingly, whenever disciplinary action is taken against a protected right or interest without affording a hearing, a hearing must be provided promptly thereafter.<sup>5</sup> Under a state constitution, due process in the administrative context does not demand that every hearing comport to the standards that a court would follow, but rather that the administrative process afford an impartial decision-maker, notice and the opportunity to be heard, procedures consistent with the essentials of a fair trial, and a reviewable record.<sup>6</sup> Although a trial-type hearing may be required,<sup>7</sup> such as when a property or liberty interest is threatened,<sup>8</sup> a hearing is not required in every conceivable case of government impairment of private interests.<sup>9</sup>

Generally, there is no constitutional due process right to prehearing discovery in administrative proceedings.<sup>10</sup> Furthermore, due process does not preclude the use of hearsay evidence in administrative proceedings.<sup>11</sup>

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

#### Footnotes

- 1 Neb.—*Stauffer v. Weedlun*, 188 Neb. 105, 195 N.W.2d 218 (1972).  
Or.—*West v. City of Astoria*, 18 Or. App. 212, 524 P.2d 1216 (1974).  
Tex.—*English Freight Co. v. Knox*, 180 S.W.2d 633 (Tex. Civ. App. Austin 1944), writ refused w.o.m., (Sept. 27, 1944).
- 2 U.S.—*Precious Metals Associates, Inc. v. Commodity Futures Trading Commission*, 620 F.2d 900 (1st Cir. 1980); *William Jefferson & Co., Inc. v. Board of Assessment and Appeals No. 3 ex rel. Orange County*, 695 F.3d 960 (9th Cir. 2012), for additional opinion, see, 482 Fed. Appx. 273 (9th Cir. 2012), cert. denied, 133 S. Ct. 1494, 185 L. Ed. 2d 549 (2013) and cert. denied, 133 S. Ct. 1494, 185 L. Ed. 2d 549 (2013).  
Pa.—*Montgomery Tp. v. Com., Bureau of Social Sec. for Public Employees*, 68 Pa. Commw. 525, 449 A.2d 841 (1982).  
R.I.—*Davis v. Wood*, 427 A.2d 332 (R.I. 1981).
- 3 U.S.—*William Jefferson & Co., Inc. v. Board of Assessment and Appeals No. 3 ex rel. Orange County*, 695 F.3d 960 (9th Cir. 2012), for additional opinion, see, 482 Fed. Appx. 273 (9th Cir. 2012), cert. denied, 133 S. Ct. 1494, 185 L. Ed. 2d 549 (2013) and cert. denied, 133 S. Ct. 1494, 185 L. Ed. 2d 549 (2013).  
S.C.—*Garris v. Governing Bd. of South Carolina Reinsurance Facility*, 333 S.C. 432, 511 S.E.2d 48 (1998).  
**No particular form of trial required**  
Mass.—*Langlitz v. Board of Registration of Chiropractors*, 396 Mass. 374, 486 N.E.2d 48 (1985).
- 4 Neb.—*City of Lincoln v. Twin Platte Natural Resources Dist.*, 250 Neb. 452, 551 N.W.2d 6 (1996).  
Or.—*West v. City of Astoria*, 18 Or. App. 212, 524 P.2d 1216 (1974).  
Utah—*Vali Convalescent & Care Inst. v. Industrial Com'n of Utah*, 649 P.2d 33 (Utah 1982).
- 5 U.S.—*Barry v. Barchi*, 443 U.S. 55, 99 S. Ct. 2642, 61 L. Ed. 2d 365 (1979).  
Fla.—*Aurora Enterprises, Inc. v. State, Dept. of Business Regulation*, 395 So. 2d 604 (Fla. 3d DCA 1981).
- 6 Alaska—*Nash v. Matanuska-Susitna Borough*, 239 P.3d 692 (Alaska 2010).
- 7 Ky.—*City of Northfield v. Holiday Manor, Inc.*, 479 S.W.2d 596 (Ky. 1972).
- 8 N.M.—*Archuleta v. Santa Fe Police Dept. ex rel. City of Santa Fe*, 2005-NMSC-006, 137 N.M. 161, 108 P.3d 1019 (2005).
- 9 U.S.—*Cafeteria and Restaurant Workers Union, Local 473, AFL-CIO v. McElroy*, 367 U.S. 886, 81 S. Ct. 1743, 6 L. Ed. 2d 1230 (1961).  
D.C.—*In re Sibley*, 990 A.2d 483 (D.C. 2010).  
La.—*Hamilton v. Louisiana Health and Human Resources Administration*, 341 So. 2d 1190 (La. Ct. App. 1st Cir. 1976), writ refused, 344 So. 2d 4 (La. 1977).  
Mich.—*Westland Convalescent Center v. Blue Cross & Blue Shield of Michigan*, 414 Mich. 247, 324 N.W.2d 851 (1982).  
Mont.—*City of Livingston v. Montana Council No. 9, American Federation of State, County and Mun. Emp.*, 174 Mont. 421, 571 P.2d 374 (1977).  
N.J.—*Nicoletta v. North Jersey Dist. Water Supply Commission*, 77 N.J. 145, 390 A.2d 90 (1978).  
S.C.—*Kurschner v. City of Camden Planning Com'n*, 376 S.C. 165, 656 S.E.2d 346 (2008).  
**Informal consultation**  
Opportunity for informal consultation with designated personnel empowered to correct mistaken, determination constitutes a "due process hearing" in appropriate circumstances.  
U.S.—*Memphis Light, Gas and Water Division v. Craft*, 436 U.S. 1, 98 S. Ct. 1554, 56 L. Ed. 2d 30 (1978).
- 10 Conn.—*Pet v. Department of Health Services*, 207 Conn. 346, 542 A.2d 672 (1988).
- 11 W. Va.—*State ex rel. Hoover v. Smith*, 198 W. Va. 507, 482 S.E.2d 124 (1997).  
U.S.—*Toribio-Chavez v. Holder*, 611 F.3d 57 (1st Cir. 2010).

Ill.—[Wisam 1, Inc. v. Illinois Liquor Control Com'n](#), 2014 IL 116173, 385 Ill. Dec. 1, 18 N.E.3d 1 (Ill. 2014), cert. denied, 135 S. Ct. 1494 (2015).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 16D C.J.S. Constitutional Law § 2019

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### B. Administrative Proceedings

##### 2. Notice and Hearing

## § 2019. Requirement of full and fair hearing

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4025 to 4027, 4045, 4055

**In order to comply with the requirements of due process, the hearing granted by an administrative body must be full and a fair, with notice and an opportunity for a full and fair hearing provided at some stage of the agency proceedings.**

In order to comply with the requirements of due process, the hearing granted by an administrative body must be full and fair.<sup>1</sup> If an administrative body acts in a quasi-judicial manner, due process requires notice and an opportunity for a full and fair hearing at some stage of the agency proceedings.<sup>2</sup> The "fair hearing" required under the principle of due process includes not only rudimentary fairness in the conduct of the hearing when and where held but also a reasonably fair opportunity to be present at the time and place fixed to cross-examine any opposing witness, to offer evidence, and to meet the claims of the opposing party or to be heard in defense,<sup>3</sup> and due process forbids the agency to use evidence in a way that forecloses the opportunity to offer a contrary presentation.<sup>4</sup> Mere irregularity or error with respect to a hearing cannot support a claim that due process was denied.<sup>5</sup>

One ample, prejudgment hearing satisfies the requirement of due process in an administrative proceeding, and thus, a rehearing or a new trial is not essential.<sup>6</sup> However, since the authority to reconsider the matter involved is subject to the requirements of



procedural due process,<sup>7</sup> there can be no substantial change in the rights of the parties without a hearing on notice.<sup>8</sup> Procedural due process is satisfied if a board, upon reopening its decision, gives the parties due notice of a hearing and an opportunity to be heard.<sup>9</sup>

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

## Footnotes

- 1 Ill.—*Burns v. Police Bd. of City of Chicago*, 104 Ill. App. 3d 612, 60 Ill. Dec. 401, 432 N.E.2d 1300 (1st Dist. 1982).  
Mich.—*Board of Ed. of Rochester Community Schools v. Michigan State Bd. of Ed.*, 104 Mich. App. 569, 305 N.W.2d 541 (1981).  
Mo.—*Tonkin v. Jackson County Merit System Commission*, 599 S.W.2d 25 (Mo. Ct. App. W.D. 1980).  
N.H.—*Society for Protection of New Hampshire Forests v. Site Evaluation Committee*, 115 N.H. 163, 337 A.2d 778 (1975).  
Tex.—*Texas Employment Commission v. Johnnie Dodd Automotive Enterprises, Inc.*, 551 S.W.2d 171 (Tex. Civ. App. Waco 1977), writ refused n.r.e., (Oct. 12, 1977).  
**Ex parte communications**  
When determining whether ex parte communications in administrative proceedings violate due process, a court considers: (1) the gravity of the ex parte communications; (2) whether the contacts may have influenced the ultimate decision; (3) whether the party making the improper contacts benefited from the ultimate decision; (4) whether the contents of the communications were unknown to opposing parties, who therefore had no opportunity to respond; and (5) whether vacation of the decision and remand for new proceedings would serve a useful purpose.  
Me.—*Passadumkeag Mountain Friends v. Bd. of Environmental Protection*, 2014 ME 116, 102 A.3d 1181 (Me. 2014).  
2 Neb.—*Stoneman v. United Nebraska Bank*, 254 Neb. 477, 577 N.W.2d 271 (1998).  
3 U.S.—*Paskaly v. Seale*, 506 F.2d 1209 (9th Cir. 1974).  
Cal.—*Stanson v. San Diego Coast Regional Com.*, 101 Cal. App. 3d 38, 161 Cal. Rptr. 392 (4th Dist. 1980).  
Mo.—*Mueller v. Ruddy*, 617 S.W.2d 466 (Mo. Ct. App. E.D. 1981).  
N.Y.—*Pascual v. State Bd. of Law Examiners*, 79 A.D.2d 1054, 435 N.Y.S.2d 387 (3d Dep't 1981).  
Pa.—*Callahan v. Pennsylvania State Police*, 494 Pa. 461, 431 A.2d 946 (1981).  
**Stenographer**  
Due process is afforded regardless of whether testimony is taken by a stenographer or first taken by a tape recorder and then duly transcribed by a stenographer.  
Pa.—*Campbell v. Com., Pennsylvania State Police*, 47 Pa. Commw. 574, 408 A.2d 591 (1979).  
4 U.S.—*Bowman Transp., Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 95 S. Ct. 438, 42 L. Ed. 2d 447 (1974).  
**Making evidence available**  
It is violation of due process for fact finder to have before it evidence or reports concerning person or subject matter upon which it must pass judgment if such evidence or reports are not made available to all parties to the proceeding.  
Mo.—*Tullock v. City of St. Charles*, 602 S.W.2d 860 (Mo. Ct. App. E.D. 1980).  
5 U.S.—*U.S. v. Bouziden*, 108 F. Supp. 395 (W.D. Okla. 1952).  
**Collateral issues**  
Wis.—*Gray Well Drilling Co. v. Wisconsin State Bd. of Health*, 263 Wis. 417, 58 N.W.2d 64 (1953).  
6 Cal.—*De Cordoba v. Governing Board*, 71 Cal. App. 3d 155, 139 Cal. Rptr. 312 (2d Dist. 1977).  
Ind.—*Gibson v. Industrial Bd.*, 176 Ind. App. 489, 376 N.E.2d 502 (1978).  
Tex.—*Texas Oil and Gas Corp. v. Railroad Commission*, 575 S.W.2d 348 (Tex. Civ. App. Austin 1978).  
7 Conn.—*Shea v. State Emp. Retirement Commission*, 170 Conn. 610, 368 A.2d 159 (1976).  
8 N.J.—*Handlon v. Town of Belleville*, 4 N.J. 99, 71 A.2d 624, 16 A.L.R.2d 1118 (1950).  
**Reversal of earlier order**

- 9 Pa.—[West Penn Power Co. v. Pennsylvania Public Utility Commission](#), 174 Pa. Super. 123, 100 A.2d 110 (1953).
- Cal.—[State Compensation Ins. Fund v. Industrial Acc. Commission](#), 73 Cal. App. 2d 248, 166 P.2d 310 (2d Dist. 1946).
- N.J.—[Adolph v. Elastic Stop Nut Corp. of America](#), 18 N.J. Super. 543, 87 A.2d 736 (App. Div. 1952).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 16D C.J.S. Constitutional Law § 2020

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### B. Administrative Proceedings

##### 2. Notice and Hearing

## § 2020. Persons involved in hearing and decision; impartiality

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4025 to 4027, 4045, 4055

**In order to comply with due process requirements, administrative proceedings must be conducted before an impartial body lacking bias.**

In order to satisfy due process, administrative proceedings must be impartial,<sup>1</sup> conducted before a neutral decision-maker who is free of bias,<sup>2</sup> hostility, and prejudice,<sup>3</sup> but due process is satisfied as long as a hearing officer is unbiased.<sup>4</sup> Since a litigant seeking to establish a due process violation on the grounds that an administrative tribunal is biased must overcome a presumption of honesty and integrity in those serving as adjudicators,<sup>5</sup> a substantial showing of personal bias is required to disqualify a hearing officer or tribunal.<sup>6</sup> A party may succeed with a due process claim by presenting special facts and circumstances demonstrating that the risk of actual bias in a particular proceeding is intolerably high.<sup>7</sup>

Not every member of a tribunal need be completely familiar with the factual issues presented at a hearing,<sup>8</sup> administrative law proceedings routinely involve some degree of permissible prehearing knowledge on the part of the hearing examiners, and that knowledge does not necessarily indicate sufficient bias to raise constitutional due process concerns.<sup>9</sup> Prior involvement in some

aspects of a case will not necessarily bar a person from acting as a decision-maker in that case so long as the person did not participate in taking the action that is under review,<sup>10</sup> and mere involvement in the preliminary procedures required to bring the case to a hearing does not amount to an unacceptable familiarity or bias.<sup>11</sup> Moreover, it is not contrary to due process to allow an administrator whose initial decision was reversed on appeal to decide the same question again.<sup>12</sup>

A decision-maker is not disqualified on due process grounds simply by virtue of having taken a position, even in public, on a policy issue related to the dispute, if there is no showing that the decision-maker is incapable of judging the particular controversy fairly,<sup>13</sup> on the basis of its own circumstances.<sup>14</sup> On the other hand, due process is denied if a majority of a decision-making panel is strongly identified with only one of the parties.<sup>15</sup>

Courts have held that due process requires that an administrative body avoid not just actual bias but also the appearance of bias or prejudice<sup>16</sup> although there is contrary authority.<sup>17</sup> Under due process, a judge's or temporary hearing officer's actual bias requiring disqualification need not be shown when the alleged bias is due to a financial interest in the outcome of the dispute.<sup>18</sup> For purposes of determining whether due process requires disqualification of an adjudicator in administrative proceeding, the presence of a clear, substantial pecuniary benefit is one of the most evident causes of either conscious or subconscious bias.<sup>19</sup> Furthermore, it is the type of temptation that inevitably compromises public confidence in the process itself, undermining the legitimacy of any decisions so tainted.<sup>20</sup> However, the bias of an agency adjudicator based on a financial stake cannot properly be inferred if the pecuniary interest is too remote to create a possible temptation to rule adversely.<sup>21</sup>

### *Attendance of panel.*

Generally, due process does not require that the persons who ultimately decide the facts must personally hear the witnesses<sup>22</sup> or be provided a report on their credibility.<sup>23</sup> However, in administrative proceedings that turn on the credibility of witnesses, procedural due process requires that all agency panel members deciding the case be in attendance for all of the parties' testimony, plus any other testimony on the issue of credibility.<sup>24</sup>

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

### Footnotes

- 1 Cal.—[Creed-21 v. City of San Diego](#), 234 Cal. App. 4th 488, 184 Cal. Rptr. 3d 128 (4th Dist. 2015).
- 2 U.S.—[Lujan v. City of Santa Fe](#), 2015 WL 1010271 (D.N.M. 2015).  
Idaho—[Owsley v. Idaho Industrial Com'n](#), 141 Idaho 129, 106 P.3d 455 (2005).  
Neb.—[Central Platte Natural Resources Dist. v. State of Wyo.](#), 245 Neb. 439, 513 N.W.2d 847 (1994).  
N.J.—[Matter of Carberry](#), 114 N.J. 574, 556 A.2d 314 (1989).  
**Test for bias**  
Under due process analysis, the test for bias of an agency adjudicator is whether the adjudicator's situation is one that would offer a possible temptation to an average person, as a judge, to forget the burden of proof required to rule against the defendant, or that might lead the adjudicator to ignore the proper balance between the state and the defendant.  
Nev.—[Gilman v. Nevada State Bd. of Veterinary Medical Examiners](#), 120 Nev. 263, 89 P.3d 1000 (2004) (disapproved of on other grounds by, [Nassiri v. Chiropractic Physicians' Bd.](#), 327 P.3d 487, 130 Nev. Adv. Op. No. 27 (Nev. 2014)).  
**Political interference**  
Political interference tainting the administrative process violates the right of a party to due process of law.  
U.S.—[Aera Energy LLC v. Salazar](#), 691 F. Supp. 2d 25 (D.D.C. 2010), [aff'd](#), 642 F.3d 212 (D.C. Cir. 2011).  
U.S.—[Withrow v. Larkin](#), 421 U.S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975).  
Cal.—[Applebaum v. Board of Directors](#), 104 Cal. App. 3d 648, 163 Cal. Rptr. 831 (3d Dist. 1980).
- 3

Ill.—*Burns v. Police Bd. of City of Chicago*, 104 Ill. App. 3d 612, 60 Ill. Dec. 401, 432 N.E.2d 1300 (1st Dist. 1982).

R.I.—*La Petite Auberge, Inc. v. Rhode Island Commission for Human Rights*, 419 A.2d 274 (R.I. 1980).

W. Va.—*Clarke v. West Virginia Bd. of Regents*, 166 W. Va. 702, 279 S.E.2d 169 (1981).

U.S.—*Cypert v. Independent School Dist. No. 1-050 of Osage County*, 661 F.3d 477, 273 Ed. Law Rep. 596 (10th Cir. 2011).

R.I.—*In re McKenna*, 110 A.3d 1126 (R.I. 2015).

U.S.—*Cypert v. Independent School Dist. No. 1-050 of Osage County*, 661 F.3d 477, 273 Ed. Law Rep. 596 (10th Cir. 2011).

Tenn.—*Heyne v. Metropolitan Nashville Bd. of Public Educ.*, 380 S.W.3d 715, 286 Ed. Law Rep. 730 (Tenn. 2012).

Ill.—*Ladenheim v. Union County Hospital Dist.*, 76 Ill. App. 3d 90, 31 Ill. Dec. 568, 394 N.E.2d 770 (5th Dist. 1979).

W. Va.—*Marfork Coal Co. v. Callaghan*, 215 W. Va. 735, 601 S.E.2d 55 (2004).

#### **Participation in study not disqualifying**

A state hydrologist was not subject to disqualification, as a matter of due process, from assisting the director of the Department of Water Resources in decision-making on in-stream flow applications, based on her participation in a study and preparation of a report regarding the instant applications and her alleged general bias in favor of in-stream flows since neither any opinion formed as to the optimum flow level as a result of her participating in the study nor any general bias in favor of in-stream flows would be disqualifying.

Neb.—*Central Platte Natural Resources Dist. v. State of Wyo.*, 245 Neb. 439, 513 N.W.2d 847 (1994).

U.S.—*Hoberman v. Lock Haven Hospital*, 377 F. Supp. 1178 (M.D. Pa. 1974).

Ill.—*Kraut v. Rachford*, 51 Ill. App. 3d 206, 9 Ill. Dec. 240, 366 N.E.2d 497 (1st Dist. 1977).

Ill.—*Ladenheim v. Union County Hospital Dist.*, 76 Ill. App. 3d 90, 31 Ill. Dec. 568, 394 N.E.2d 770 (5th Dist. 1979).

U.S.—*Withrow v. Larkin*, 421 U.S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975).

U.S.—*Hortonville Joint School Dist. No. 1 v. Hortonville Educ. Ass'n*, 426 U.S. 482, 96 S. Ct. 2308, 49 L. Ed. 2d 1 (1976).

Colo.—*Mountain States Tel. and Tel. Co. v. Public Utilities Com'n of State of Colo.*, 763 P.2d 1020 (Colo. 1988).

Mont.—*State ex rel. Montana Wilderness Ass'n v. Board of Natural Resources and Conservation of State of Mont.*, 200 Mont. 11, 648 P.2d 734 (1982).

N.Y.—*American Cyanamid Co. v. Public Service Com'n*, 88 A.D.2d 1063, 452 N.Y.S.2d 744 (3d Dep't 1982).

Colo.—*Mountain States Tel. and Tel. Co. v. Public Utilities Com'n of State of Colo.*, 763 P.2d 1020 (Colo. 1988).

Mich.—*Vayiar v. Vic Tanny Intern.*, 114 Mich. App. 388, 319 N.W.2d 338 (1982).

Pa.—*Carr v. Com., State Bd. of Pharmacy*, 48 Pa. Commw. 330, 409 A.2d 941 (1980).

Wyo.—*Painter v. Abels*, 998 P.2d 931 (Wyo. 2000).

#### **Commingling of functions**

When a single individual commingles the investigative, accusative, and adjudicative functions, the mere appearance of prejudice may be sufficient to violate due process.

N.H.—*Appeal of Trotzer*, 143 N.H. 64, 719 A.2d 584 (1998).

Conn.—*Moraski v. Connecticut Bd. of Examiners of Embalmers and Funeral Directors*, 291 Conn. 242, 967 A.2d 1199 (2009).

Cal.—*Haas v. County of San Bernardino*, 27 Cal. 4th 1017, 119 Cal. Rptr. 2d 341, 45 P.3d 280 (2002).

#### **Risk of bias**

Evidence that a hearing examiner in an administrative hearing stood to benefit financially from the result that was reached would constitute a due process violation as creating an unconstitutional risk of bias.

W. Va.—*Marfork Coal Co. v. Callaghan*, 215 W. Va. 735, 601 S.E.2d 55 (2004).

Utah—*V-1 Oil Co. v. Department of Environmental Quality, Div. of Solid and Hazardous Waste*, 939 P.2d 1192 (Utah 1997).

- 20 Utah—*V-1 Oil Co. v. Department of Environmental Quality, Div. of Solid and Hazardous Waste*, 939 P.2d 1192 (Utah 1997).
- 21 Nev.—*Gilman v. Nevada State Bd. of Veterinary Medical Examiners*, 120 Nev. 263, 89 P.3d 1000 (2004) (disapproved of on other grounds by, *Nassiri v. Chiropractic Physicians' Bd.*, 327 P.3d 487, 130 Nev. Adv. Op. No. 27 (Nev. 2014)).
- 22 U.S.—*Teschner v. Weinberger*, 389 F. Supp. 1293 (E.D. Wis. 1975).  
Mass.—*Massachusetts State Pharmaceutical Ass'n v. Rate Setting Com'n*, 387 Mass. 122, 438 N.E.2d 1072 (1982).  
N.H.—*Petition of Grimm*, 138 N.H. 42, 635 A.2d 456 (1993).  
N.J.—*Matter of Fichner*, 144 N.J. 459, 677 A.2d 201 (1996).  
N.Y.—*Rothkoff v. Ratner*, 104 Misc. 2d 204, 428 N.Y.S.2d 138 (Sup 1980).
- Decision-maker informed by hearing officer**  
Although due process requires that administrative officers hear evidence presented at a hearing, they need not physically attend the presentation of evidence and may "hear" evidence by making an informed judgment on the evidence received through the hearing officer.  
Alaska—*Schmidt v. Beeson Plumbing and Heating, Inc.*, 869 P.2d 1170 (Alaska 1994).
- Role of staff or assistants**  
The due process requirement that an administrative board acting in a quasi-judicial capacity must consider all evidence does not mean that the board must itself hear the evidence; staff or assistants may prepare and present the evidence, which the administrative board must consider when rendering its decision.  
S.C.—*Garris v. Governing Bd. of South Carolina Reinsurance Facility*, 333 S.C. 432, 511 S.E.2d 48 (1998).  
23 U.S.—*Van Teslaar v. Bender*, 365 F. Supp. 1007 (D. Md. 1973).  
24 N.H.—*Petition of Grimm*, 138 N.H. 42, 635 A.2d 456 (1993).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 16D C.J.S. Constitutional Law § 2021

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### B. Administrative Proceedings

##### 2. Notice and Hearing

## § 2021. Persons involved in hearing and decision; impartiality —Merger of investigative, prosecutory, or adjudicative functions

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4025 to 4027, 4045, 4055

**The fact that the hearing officer or administrative agency is both the accuser or prosecutor and also the judge does not necessarily deprive the accused of due process of law, so long as the agency functions are adequately separated, and especially if judicial review of the agency determination is available.**

Although the separation of investigative, prosecutorial, and adjudicative functions is a hallmark of criminal proceedings,<sup>1</sup> due process does not require the strict adherence to separation of functions in civil matters, and accordingly, some combination of overlapping of functions in an administrative proceeding is not inconsistent with the due process requirement of fundamental fairness.<sup>2</sup> Although due process procedural fairness does not mandate the dissolution of unitary agencies in which investigative, prosecutorial, and adjudicatory functions are combined, it does require some internal separation between advocates and decision-makers in order to preserve neutrality.<sup>3</sup> The combination of investigative, prosecutorial, and adjudicatory functions within a single administrative agency does not inherently create an unacceptable risk of bias and thus does not per se violate the due process rights of individuals who are subjected to agency prosecutions.<sup>4</sup> The fact that the hearing officer<sup>5</sup> or administrative agency<sup>6</sup> is both the accuser or prosecutor and also the judge does not necessarily deprive the accused of due process of law, so

long as the agency functions are adequately separated,<sup>7</sup> and the authority gives the person appearing before it a fair, open, and impartial hearing,<sup>8</sup> especially if judicial review of the agency determination is available<sup>9</sup> and the broader institutional framework has safeguards against unchecked, abusive administrative discretion.<sup>10</sup>

Although it ordinarily does not violate due process to combine functions within an administrative agency, such as investigative and adjudicative functions,<sup>11</sup> investigatory, prosecutory, and quasi-judicial functions,<sup>12</sup> or prosecutorial and adjudicative functions,<sup>13</sup> a combination of prosecutorial and adjudicative functions may create a biased hearing that violates due process,<sup>14</sup> particularly if the functions are vested in the same person.<sup>15</sup> A party seeking to show bias resulting from dual roles in an administrative proceeding must overcome a presumption of honesty and integrity in those serving as adjudicators.<sup>16</sup>

Due process does not require the formal separation of investigative functions from adjudicative functions,<sup>17</sup> and it does not preclude those who perform adjudicative functions from participating in the investigative phase of the proceedings.<sup>18</sup> Moreover, the mere fact that an agency has investigated the matter in question does not disqualify the agency or its members under due process principles from adjudicating the case.<sup>19</sup> The challenger must demonstrate that conferring investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.<sup>20</sup> The inquiry into whether a particular combination of functions in the same administrative decision-makers violates due process is a practical one,<sup>21</sup> and the very nature of due process negates any concept of inflexible procedures that applies to every imaginable situation.<sup>22</sup>

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

#### Footnotes

- 1 Tenn.—*Heyne v. Metropolitan Nashville Bd. of Public Educ.*, 380 S.W.3d 715, 286 Ed. Law Rep. 730 (Tenn. 2012).
- 2 R.I.—*In re McKenna*, 110 A.3d 1126 (R.I. 2015).  
Tenn.—*Heyne v. Metropolitan Nashville Bd. of Public Educ.*, 380 S.W.3d 715, 286 Ed. Law Rep. 730 (Tenn. 2012).
- 3 Cal.—*Morongo Band of Mission Indians v. State Water Resources Control Bd.*, 45 Cal. 4th 731, 88 Cal. Rptr. 3d 610, 199 P.3d 1142 (2009).
- 4 Cal.—*Today's Fresh Start, Inc. v. Los Angeles County Office of Educ.*, 57 Cal. 4th 197, 159 Cal. Rptr. 3d 358, 303 P.3d 1140, 294 Ed. Law Rep. 1052 (2013).
- 5 U.S.—*Richardson v. Perales*, 402 U.S. 389, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971).  
Ill.—*American Acoustics and Plastering Co., Inc. v. Department of Revenue*, 107 Ill. App. 3d 616, 62 Ill. Dec. 892, 437 N.E.2d 419 (2d Dist. 1982).
- 6 Ga.—*Brownlee v. Williams*, 233 Ga. 548, 212 S.E.2d 359 (1975).  
Mo.—*Moore v. Board of Ed. of Special School Dist. of St. Louis County*, 547 S.W.2d 188 (Mo. Ct. App. 1977).  
N.Y.—*Felin Associates, Inc. v. Altman*, 41 A.D.2d 825, 342 N.Y.S.2d 752 (1st Dep't 1973), order aff'd, 34 N.Y.2d 895, 359 N.Y.S.2d 283, 316 N.E.2d 718 (1974).
- 7 Pa.—*Appeal of Kriss*, 57 Pa. Commw. 326, 426 A.2d 1216 (1981).
- 8 Conn.—*New England Rehabilitation Hosp. of Hartford, Inc. v. Commission on Hospitals and Health Care*, 226 Conn. 105, 627 A.2d 1257 (1993).
- 9 Mo.—*Matter of Duncan*, 541 S.W.2d 564 (Mo. 1976).  
Pa.—*Hexter v. Haverford Tp.*, 169 Pa. Super. 168, 82 A.2d 668 (1951).
- 10 Okla.—*Tweedy v. Oklahoma Bar Ass'n*, 1981 OK 12, 624 P.2d 1049 (Okla. 1981).
- 11 U.S.—*Gibson v. F. T. C.*, 682 F.2d 554 (5th Cir. 1982).  
Cal.—*In re Crooks*, 51 Cal. 3d 1090, 275 Cal. Rptr. 420, 800 P.2d 898 (1990).



Conn.—*Grimes v. Conservation Com'n of Town of Litchfield*, 243 Conn. 266, 703 A.2d 101 (1997).

Fla.—*Ridgewood Properties, Inc. v. Department of Community Affairs*, 562 So. 2d 322 (Fla. 1990).

Ga.—*Matter of Inquiry Concerning a Judge*, 265 Ga. 843, 462 S.E.2d 728 (1995).

**Actual showing of bias**

By their nature, administrative agencies perform a combination of investigatory and adjudicatory functions and to permit them to do so does not violate the strictures of due process absent a showing of bias.

Mo.—*State, ex rel. Martin-Erb v. Missouri Com'n on Human Rights*, 77 S.W.3d 600 (Mo. 2002).

12

Nev.—*Rudin v. Nevada Real Estate Advisory Commission*, 86 Nev. 562, 471 P.2d 658 (1970).

N.Y.—*J. Beres & Sons Dairy, Inc. v. Barber*, 75 A.D.2d 930, 427 N.Y.S.2d 522 (3d Dep't 1980), judgment aff'd, 52 N.Y.2d 1026, 438 N.Y.S.2d 302, 420 N.E.2d 101 (1981).

N.D.—*Gale v. North Dakota Bd. of Podiatric Medicine*, 1997 ND 83, 562 N.W.2d 878 (N.D. 1997).

R.I.—*La Petite Auberge, Inc. v. Rhode Island Commission for Human Rights*, 419 A.2d 274 (R.I. 1980).

**Actual bias**

If investigative, accusative, and adjudicative functions are commingled within a single administrative agency, a party alleging a due process violation must show actual bias in order to prevail.

N.H.—*Appeal of Trotzer*, 143 N.H. 64, 719 A.2d 584 (1998).

13

Ga.—*Brownlee v. Williams*, 233 Ga. 548, 212 S.E.2d 359 (1975).

Md.—*Consumer Protection Div. Office of Atty. Gen. v. Consumer Pub. Co., Inc.*, 304 Md. 731, 501 A.2d 48 (1985).

N.D.—*State v. Sinner*, 207 N.W.2d 495, 60 A.L.R.3d 350 (N.D. 1973).

**Commingling of functions**

To determine whether there has been a violation of a person's right to due process by a commingling of adjudicative and prosecutorial functions in an agency, the court examines the process that is actually provided, not the process that is purportedly authorized.

Pa.—*Stone and Edwards Ins. Agency, Inc. v. Com., Dept. of Ins.*, 538 Pa. 276, 648 A.2d 304 (1994).

14

U.S.—*Hoberman v. Lock Haven Hospital*, 377 F. Supp. 1178 (M.D. Pa. 1974).

Ga.—*Brownlee v. Williams*, 233 Ga. 548, 212 S.E.2d 359 (1975).

Ind.—*Martincich v. City of Hammond*, 419 N.E.2d 240 (Ind. Ct. App. 1981).

15

U.S.—*Taylor v. New York City Transit Authority*, 309 F. Supp. 785 (E.D. N.Y. 1970), judgment aff'd, 433 F.2d 665 (2d Cir. 1970).

Ohio.—*Burke v. Fought*, 64 Ohio App. 2d 50, 18 Ohio Op. 3d 32, 410 N.E.2d 1255 (6th Dist. Lucas County 1978).

Pa.—*Kreiger v. City of Philadelphia, Bd. of Pensions and Retirement*, 47 Pa. Commw. 131, 408 A.2d 170 (1979).

R.I.—*Davis v. Wood*, 427 A.2d 332 (R.I. 1981).

16

Colo.—*North Colorado Medical Center, Inc. v. Nicholas*, 27 P.3d 828 (Colo. 2001), as modified on denial of reh'g, (Aug. 6, 2001).

17

Or.—*Fritz v. Oregon State Penitentiary, Corrections Division*, 30 Or. App. 1117, 569 P.2d 654 (1977).

18

Or.—*Fritz v. Oregon State Penitentiary, Corrections Division*, 30 Or. App. 1117, 569 P.2d 654 (1977).

19

U.S.—*Rite Aid Corp. v. Board of Pharmacy of State of N. J.*, 421 F. Supp. 1161 (D.N.J. 1976).

20

Colo.—*North Colorado Medical Center, Inc. v. Nicholas*, 27 P.3d 828 (Colo. 2001), as modified on denial of reh'g, (Aug. 6, 2001).

21

Ind.—*Rynerson v. City of Franklin*, 669 N.E.2d 964 (Ind. 1996).

22

Ind.—*Rynerson v. City of Franklin*, 669 N.E.2d 964 (Ind. 1996).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 16D C.J.S. Constitutional Law § 2022

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### B. Administrative Proceedings

##### 2. Notice and Hearing

## § 2022. Requirement of findings of fact and conclusions of law

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4025 to 4027, 4045, 4055

**The contesting parties are entitled to know the facts relied on by the administrative tribunal in deciding the case, and it is essential to due process that the court issue basic findings of fact and conclusions of law.**

The contesting parties are entitled to know the facts relied on by the administrative tribunal in deciding the case.<sup>1</sup> It is essential to due process that the court make basic findings<sup>2</sup> and conclusions<sup>3</sup> and provide reasons for the decision<sup>4</sup> though the decision need not amount to a full opinion or even constitute formal findings of fact and conclusions of law.<sup>5</sup>

The rationale underlying the general rule that a successor judge may not make findings of fact or conclusions of law without a trial de novo is that due process entitles a litigant to have all the evidence submitted to a single judge who can see the witnesses testify and thus weigh their testimony and judge their credibility.<sup>6</sup>

### CUMULATIVE SUPPLEMENT

## Cases:

A fundamental requirement of due process of law in a quasi-judicial proceeding is the right of the parties to be apprised of the facts relied on by the tribunal in its decision. *U.S. Const. Amend. 14. Accokeek, Mattawoman, Piscataway Creeks Community Council, Inc. v. Public Service Commission of Maryland*, 451 Md. 1, 150 A.3d 856 (2016).

## [END OF SUPPLEMENT]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

## Footnotes

- 1 U.S.—*Jordan v. American Eagle Fire Ins. Co.*, 169 F.2d 281 (App. D.C. 1948).  
Fla.—*Laney v. Holbrook*, 150 Fla. 622, 8 So. 2d 465, 146 A.L.R. 202 (1942).  
Md.—*Blue Bird Cab Co. v. Maryland Dept. of Employment Sec.*, 251 Md. 458, 248 A.2d 331 (1968).  
N.J.—*Mendez v. City of Newark*, 132 N.J. Super. 261, 333 A.2d 307 (Law Div. 1975).  
Ohio—*Cicerella, Inc. v. Jerusalem Tp. Bd. of Zoning Appeals*, 59 Ohio App. 2d 31, 13 Ohio Op. 3d 99, 392 N.E.2d 574 (6th Dist. Lucas County 1978).  
**Ascertainable evidence**  
Due process of law requires that evidence on which an agency bases its findings be ascertainable so that reviewing court may have necessary data on which to determine the correctness thereof.  
Minn.—*Hunter v. Zenith Dredge Co.*, 220 Minn. 318, 19 N.W.2d 795 (1945).
- 2 Fla.—*South Trail Area Fire Control Dist. v. Knecht*, 400 So. 2d 46 (Fla. 2d DCA 1981).  
N.Y.—*R. M. Investors Corp. v. Maggi*, 104 Misc. 2d 41, 427 N.Y.S.2d 919 (County Ct. 1980), order aff'd, 120 Misc. 2d 327, 467 N.Y.S.2d 295 (App. Term 1983).  
Ohio—*A. Dicillo & Sons v. Chester Zoning Bd. of Appeals*, 44 Ohio Op. 44, 59 Ohio L. Abs. 513, 98 N.E.2d 352 (C.P. 1950).  
Pa.—*Begis v. Industrial Bd. of Dept. of Labor and Industry*, 9 Pa. Commw. 558, 308 A.2d 643 (1973).  
Wis.—*State ex rel. Harris v. Annuity and Pension Bd., Emp. Retirement System of City of Milwaukee*, 87 Wis. 2d 646, 275 N.W.2d 668 (1979).
- 3 Ohio—*A. Dicillo & Sons v. Chester Zoning Bd. of Appeals*, 44 Ohio Op. 44, 59 Ohio L. Abs. 513, 98 N.E.2d 352 (C.P. 1950).  
Wis.—*State ex rel. Harris v. Annuity and Pension Bd., Emp. Retirement System of City of Milwaukee*, 87 Wis. 2d 646, 275 N.W.2d 668 (1979).
- 4 U.S.—*Staton v. Mayes*, 552 F.2d 908 (10th Cir. 1977); *McCall v. Montgomery Housing Authority*, 809 F. Supp. 2d 1314 (M.D. Ala. 2011).  
N.H.—*Royer v. State Dept. of Employment Sec.*, 118 N.H. 673, 394 A.2d 828 (1978).  
N.J.—*Nicoletta v. North Jersey Dist. Water Supply Commission*, 77 N.J. 145, 390 A.2d 90 (1978).  
N.Y.—*R. M. Investors Corp. v. Maggi*, 104 Misc. 2d 41, 427 N.Y.S.2d 919 (County Ct. 1980), order aff'd, 120 Misc. 2d 327, 467 N.Y.S.2d 295 (App. Term 1983).  
**Detail required**  
Whether statement of agency decision is sufficiently detailed and informative to comport with minimum due process depends on whether it satisfies purposes of reasons and evidence requirement when read in conjunction with hearing record, and the more extensive and confusing a record is, the more detailed and informative statement must be.  
U.S.—*Moore v. Ross*, 502 F. Supp. 543 (S.D. N.Y. 1980), judgment aff'd, 687 F.2d 604 (2d Cir. 1982).
- 5 U.S.—*McCall v. Montgomery Housing Authority*, 809 F. Supp. 2d 1314 (M.D. Ala. 2011).
- 6 Ill.—*Smith v. Freeman*, 232 Ill. 2d 218, 327 Ill. Dec. 683, 902 N.E.2d 1069 (2009).

## 16D C.J.S. Constitutional Law § 2023

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### B. Administrative Proceedings

##### 3. Necessity of Judicial Review

## § 2023. Necessity of judicial review of administrative proceedings, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4028

**It is ordinarily essential to due process that a person affected by an administrative decision be accorded the right of judicial review, but it is not a denial of due process to make administrative decisions final as to the facts.**

In order to satisfy the requirements of due process it is generally required that administrative proceedings be subject to judicial review, including a judicial determination made on notice and a hearing, particularly if property rights are affected.<sup>1</sup> At a minimum, when the administrative process has been exhausted, due process requires that absent a countervailing state interest of overriding significance, a party forced to settle its claims of right and duty through judicial process must be given a meaningful opportunity to be heard.<sup>2</sup> If, however, the right of judicial review is sufficiently preserved, there can be no proper claim of lack of due process in that respect<sup>3</sup> as when the right of judicial review is afforded after a summary or other action by administrative officials.<sup>4</sup> In an administrative appeal, a court will find a due process violation only if there is a showing of prejudice.<sup>5</sup> There is no inherent right of judicial review, as by appeal, from an administrative order, such as one that does not affect property rights.<sup>6</sup> Furthermore, if a statute authorizing certain administrative action relates to a public right and not to private rights, the absence of provision for an appeal or judicial review does not render it invalid as denying due process.<sup>7</sup> Decisions of an administrative

officer or board may be made final concerning matters that fall within the police powers or similar authority,<sup>8</sup> particularly if constitutional rights have not been infringed.<sup>9</sup>

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

## Footnotes

- 1 U.S.—[American Federation of Government Emp., Local 1858 v. Callaway](#), 398 F. Supp. 176 (N.D. Ala. 1975).  
Cal.—[Department of Alcoholic Bev. Control v. Alcoholic Bev. etc. Appeals Bd.](#), 118 Cal. App. 3d 720, 173 Cal. Rptr. 582 (2d Dist. 1981).  
N.J.—[State, Dept. of Community Affairs v. Wertheimer](#), 177 N.J. Super. 595, 427 A.2d 592 (App. Div. 1980).  
**Biased administrative tribunal**  
Lack of due process resulting from a biased administrative agency tribunal cannot be corrected on appeal, for purposes of determining whether statutory procedures for seeking judicial review can be circumvented.  
Okla.—[Johnson v. Board of Governors of Registered Dentists of State of Okl.](#), 1996 OK 41, 913 P.2d 1339 (Okla. 1996), corrected, (May 2, 1996).  
**Challenging validity of regulations**  
Ky.—[Hohnke v. Com.](#), 451 S.W.2d 162 (Ky. 1970).  
S.D.—[House of Seagram, Inc. v. Assam Drug Co.](#), 85 S.D. 27, 176 N.W.2d 491 (1970).  
**Bond requirement**  
Conditioning judicial review upon a security bond does not violate due process if a litigant has participated in extensive administrative proceedings.  
Minn.—[The Kilowatt Organization \(TKO\), Inc. v. Department of Energy, Planning and Development](#), 336 N.W.2d 529 (Minn. 1983).
- 2 Minn.—[Schober v. Commissioner of Revenue](#), 853 N.W.2d 102 (Minn. 2013).
- 3 U.S.—[Stoehr v. Wallace](#), 255 U.S. 239, 41 S. Ct. 293, 65 L. Ed. 604 (1921).  
Fla.—[Scholastic Systems, Inc. v. LeLoup](#), 307 So. 2d 166 (Fla. 1974).  
Iowa—[Maquoketa Community School Dist. v. George](#), 193 N.W.2d 519 (Iowa 1972).  
**Equity power**  
To a large extent, the ability of courts to use the equity power to review administrative decisions is founded on the constitutional basis of the Due Process Clause.  
D.C.—[Columbia Realty Venture v. District of Columbia Housing Rent Commission](#), 350 A.2d 120 (D.C. 1975).
- 4 U.S.—[Yakus v. U. S.](#), 321 U.S. 414, 64 S. Ct. 660, 88 L. Ed. 834 (1944).  
Ky.—[Milner v. Gibson](#), 249 Ky. 594, 61 S.W.2d 273 (1933).  
La.—[Hunter Co. v. McHugh](#), 202 La. 97, 11 So. 2d 495 (1942).  
Tex.—[Gillaspie v. Department of Public Safety](#), 152 Tex. 459, 259 S.W.2d 177 (1953).
- 5 Ill.—[Wolin v. Department of Financial and Professional Regulation](#), 2012 IL App (1st) 112113, 367 Ill. Dec. 869, 983 N.E.2d 23 (App. Ct. 1st Dist. 2012).
- 6 Ill.—[Board of Ed. of Addison School Dist. No. 4, DuPage County v. Gates](#), 22 Ill. App. 3d 16, 316 N.E.2d 525 (2d Dist. 1974).  
Iowa—[Cedar Rapids Human Rights Commission v. Cedar Rapids Community School Dist., in Linn County](#), 222 N.W.2d 391 (Iowa 1974).  
Mo.—[State ex rel. Hermitage R-IV School Dist. v. Hickory County R-I School Dist.](#), 558 S.W.2d 667 (Mo. 1977).  
N.C.—[Matter of Vandiford](#), 56 N.C. App. 224, 287 S.E.2d 912 (1982).
- 7 Mass.—[Morrissey v. State Ballot Law Commission](#), 312 Mass. 121, 43 N.E.2d 385 (1942).
- 8 Md.—[Creaghan v. City of Baltimore](#), 132 Md. 442, 104 A. 180 (1918).  
Ohio—[Raabe v. State](#), 7 Ohio App. 119, 29 Ohio C.D. 330, 1917 WL 1003 (6th Dist. Lucas County 1917).  
Wis.—[State ex rel. Atty. Gen. v. Fasekas](#), 223 Wis. 356, 269 N.W. 700 (1936).
- 9 U.S.—[D'Argento v. Dulles](#), 113 F. Supp. 933 (D. D.C. 1953).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 16D C.J.S. Constitutional Law § 2024

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### B. Administrative Proceedings

##### 3. Necessity of Judicial Review

## § 2024. Form of review of administrative action

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4028

**There is no constitutional requirement that the test of the validity of an administrative action be made in one tribunal rather than in another as long as there is an opportunity to be heard and for judicial review that satisfies the demands of due process.**

There is no constitutional requirement that the test of the validity of an administrative action be made in one tribunal rather than in another as long as there is an opportunity to be heard and for judicial review that satisfies the demands of due process.<sup>1</sup> Any procedure affording a fair and reasonable review will satisfy due process regardless of its particular form or character<sup>2</sup> or the court in which the review is had.<sup>3</sup> Furthermore, confining judicial review of an administrative determination to a single court does not violate due process.<sup>4</sup> Mere postponement of the judicial inquiry is not a denial of due process so long as the opportunity given for the ultimate judicial determination is adequate,<sup>5</sup> particularly if only property rights are involved.<sup>6</sup> A person who has agreed to be bound by the provisions of a statutory scheme that provides for decisions by an administrative board cannot complain of the scheme's lack of a provision for judicial review.<sup>7</sup>

If an initial factual determination is made by an administrative agency acting in a nonadjudicative enforcement capacity, due process requires that the person whose rights are affected be able to obtain de novo review by a neutral adjudicator.<sup>8</sup> Under this de novo review, the enforcement agency determination does not benefit automatically from a presumption in its favor.<sup>9</sup>

In some circumstances, administrative acts need not be subject to judicial review in order to comply with the constitutional requirement of due process,<sup>10</sup> as where a hearing has already afforded the requisite due process,<sup>11</sup> or if the matter is within the narrow band of matters wholly committed to official discretion as a result of the delicate questions of national security raised and the constitutional placement of those concerns with political departments of government.<sup>12</sup> Unless a fundamental interest is at stake, the Due Process Clause allows states to restrict access to judicial review of civil administrative proceedings.<sup>13</sup>

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

#### Footnotes

- 1 U.S.—*Yakus v. U. S.*, 321 U.S. 414, 64 S. Ct. 660, 88 L. Ed. 834 (1944).  
 Fla.—*Scholastic Systems, Inc. v. LeLoup*, 307 So. 2d 166 (Fla. 1974).  
 Ind.—*Warren v. Indiana Telephone Co.*, 217 Ind. 93, 26 N.E.2d 399 (1940).  
 Mass.—*Lincoln Hotel Co. v. Assessors of Boston*, 317 Mass. 505, 59 N.E.2d 1 (1945).
- 2 Mo.—*State ex rel. Anderson Motor Service Co. v. Public Service Com'n of Missouri*, 339 Mo. 469, 97 S.W.2d 116 (1936).  
**One adequate method**  
 Requirements of "due process of law" are met if one adequate method of judicial review of the orders of administrative agencies is set up, and such method may be made exclusive by statute.  
 Fla.—*Bath Club, Inc. v. Dade County*, 394 So. 2d 110 (Fla. 1981).
- 3 Mo.—*State ex rel. State Tax Commission v. Luten*, 459 S.W.2d 375 (Mo. 1970).
- 4 U.S.—*Yakus v. U. S.*, 321 U.S. 414, 64 S. Ct. 660, 88 L. Ed. 834 (1944).
- 5 N.Y.—*Mass v. Blum*, 112 Misc. 2d 898, 447 N.Y.S.2d 660 (Sup 1982).
- 6 U.S.—*Bowles v. Willingham*, 321 U.S. 503, 64 S. Ct. 641, 88 L. Ed. 892 (1944).  
 N.J.—*Jamouneau v. Harner*, 16 N.J. 500, 109 A.2d 640 (1954).
- 7 U.S.—*Booth Fisheries Co. v. Industrial Commission of Wisconsin*, 271 U.S. 208, 46 S. Ct. 491, 70 L. Ed. 908 (1926) (workers'compensation).
- 8 D.C.—*In re W.M.*, 851 A.2d 431 (D.C. 2004).
- 9 D.C.—*In re W.M.*, 851 A.2d 431 (D.C. 2004).
- 10 U.S.—*First Investment Annuity Company of America v. Miller*, 446 U.S. 981, 100 S. Ct. 2961, 64 L. Ed. 2d 837 (1980).
- 11 U.S.—*Saharoff v. Stone*, 638 F.2d 90 (9th Cir. 1980).  
 Cal.—*Smith v. City and County of San Francisco*, 11 Cal. App. 3d 606, 89 Cal. Rptr. 878 (1st Dist. 1970).  
 Or.—*Wisherd v. Paul Koch Volkswagen, Inc.*, 28 Or. App. 513, 559 P.2d 1305 (1977).
- 12 U.S.—*Nielson v. Seaborg*, 348 F. Supp. 1369 (D. Utah 1972).
- 13 U.S.—*Bevis v. City of New Orleans*, 686 F.3d 277 (5th Cir. 2012).  
**Criminal sanctions**  
 Due process requires that where a determination made in an administrative proceeding is to play a critical role in the subsequent imposition of a criminal sanction, there must be some meaningful judicial review of the administrative proceeding.  
 U.S.—*U.S. v. Gomez*, 757 F.3d 885 (9th Cir. 2014).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.



## 16D C.J.S. Constitutional Law § 2025

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

#### XXI. Civil Proceedings and Due Process; Administrative Proceedings

##### B. Administrative Proceedings

##### 3. Necessity of Judicial Review

## § 2025. Severity of penalty

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4028

**A system that allows a more severe penalty to be imposed after a successful appeal is not per se a violation of due process.**

A system that allows the imposition of a more severe penalty following a successful appeal is not per se a violation of due process.<sup>1</sup> However, a statute is void if it imposes such severe penalties in the event the court decides against the appellant as to make it hazardous to resort to the courts to test the validity of the act.<sup>2</sup> When penalties are not involved, it is unnecessary for a statute to provide for a suspension of penalty pending judicial appeal.<sup>3</sup>

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

### Footnotes

- <sup>1</sup> U.S.—[Dan J. Sheehan Co. v. Occupational Safety and Health Review Commission](#), 520 F.2d 1036 (5th Cir. 1975).
- <sup>2</sup> U.S.—[Wadley Southern Ry. Co. v. State of Georgia](#), 235 U.S. 651, 35 S. Ct. 214, 59 L. Ed. 405 (1915).  
N.D.—[State v. Watland](#), 51 N.D. 710, 201 N.W. 680, 39 A.L.R. 1169 (1924).

Ohio—[De Witt v. State ex rel. Crabbe](#), 108 Ohio St. 513, 1 Ohio L. Abs. 811, 2 Ohio L. Abs. 69, 141 N.E. 551 (1923).

3

U.S.—[Bartlett Frazier Co. v. Hyde](#), 65 F.2d 350 (C.C.A. 7th Cir. 1933).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.